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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

GEORGE W. HANCE, et al,
Plaintiffs,

Case No. P1300-CV4772

vs.

WALES ARNOLD, et ux, et al,
Defendants

**YAVAPAI-APACHE NATION'S
OBJECTIONS AND COMMENTS TO
REVISED MEMORANDUM OF
UNDERSTANDING (MOU) AND
PROPOSED ORDER**

In the matter of the VERDE DITCH
COMPANY

Pursuant to the Court's Order dated May 15, 2015, the YAVAPAI-APACHE NATION, a federally recognized Indian tribe ("Nation"), hereby files its Objections and Comments to the Revised Memorandum of Understanding (MOU) and Proposed Order (Order) that were filed on June 15, 2015, by the Verde Ditch Company (VDC) and the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users Association (collectively, SRP).

A "redline" version of the MOU incorporating potential solutions to certain of the Nation's objections is attached here as **Exhibit A** ("Redline MOU"). The Nation has also prepared a revised version of the Proposed Order for the Court's consideration, which is attached here is **Exhibit B**

1 (“YAN Proposed Order) to also incorporate several potential solutions to the concerns raised by the
2 Nation’s objections as set forth below.¹

3 OBJECTIONS AND COMMENTS

4 OBJECTION # 1:

5 **A.R.S. § 45-172 Does Not Apply to Severances and Transfers of Verde Ditch Rights Already**
6 **Under the Continuing Jurisdiction of the *Hance v. Arnold* Court Pursuant to the *Hance v.***
7 ***Arnold* Decree**

8 The application of A.R.S. § 45-172 and how this statute relates to SRP’s purported “veto”
9 power over upstream severance and transfers under A.R.S. § 45-172(A)(5) goes to the very heart
10 of the MOU before this Court. A.R.S. § 45-172(A)(5) provides:

11 No right to the use of water on or from any watershed or drainage
12 area which supplies or contributes water for the irrigation of lands
13 within an irrigation district, agricultural improvement district or
14 water users’ agricultural association shall be severed or transferred
15 without the consent of the governing body of such irrigation district,
16 improvement district or water users’ association.

17 In short, SRP asserts the right to apply its veto power under A.R.S. § 45-172(A)(5) to all
18 forms of severances and transfers, including those rights governed under the *Hance v. Arnold*
19 Decree. In contrast, the Nation contends that the veto power established by A.R.S. § 45-
20 172(A)(5) (well after the entry of the *Hance v. Arnold* Decree), does not and cannot apply to any
21 severance and transfers under the pre-existing jurisdiction of the *Hance v. Arnold* Court. Until
22 this question is resolved by this Court, shareholders will be unable to adequately assess their
23 water rights or the potential risks they face as the result of their lands being categorized Green,
24 Purple or Orange by VDC and SRP, making it difficult for shareholders to know if it is a good
25 idea for them to enter into an Historic Water Use Agreement or Severance and Transfer
26 Agreement with SRP. The Nation urges the Court to resolve this question as part of this

¹ Due to the extensive nature of the changes to the VDC’s Proposed Order, a redline version of the Proposed Order is not attached here.

1 objection process. Because Objection #1 permeates several of the Nation's objections to the
2 MOU and Order, it is briefed here.

3 **A. The Historic Development of Arizona's Water Law**

4 According to the Verde Ditch Company's Statement of Claimant filed in the Gila River
5 Adjudication, Claim No. 39-50029 ("SOC") on behalf of the shareholders, the Verde Ditch is
6 one of the oldest currently operating irrigation ditches in the State of Arizona with the first use of
7 water reported to be in 1868, when Arizona was only a Territory. According to the common law
8 of prior appropriation in effect for the Territory at the time, these shareholders had perfected an
9 appropriation of water and obtained a water right to the Verde River, with the water to be
10 delivered through the Verde Ditch. *See Clough v. Wing*, 2 Ariz. 371, 17 P. 453 (Terr. 1888).

11 None of the Territorial laws in effect when the original appropriations of water were
12 made for conveyance through the Verde Ditch contained any statutory requirements for how
13 water delivered from the Verde Ditch might be severed from the land upon which it was
14 beneficially used and transferred for use on other lands. As such, the severance and transfer of
15 water used from the Ditch was governed by common law.

16
17 Prior to the adoption of the 1919 Water Code, the common law for severances and
18 transfers (which were known at the time as "water sales") required only that the transfer of the
19 water right not injure the rights of others. When the *Hance v. Arnold* Decree was entered in
20 1909, the common law of severance and transfer (or, in essence, water sales) had already be
21 defined by Arizona Courts:

22 The general doctrine that a water-right may be the subject of
23 contract apart from the land to which it has been applied must be
24 understood, in the case of sale or alienation, as being always
25 subject to the acquired rights of others to the use of water from the
26 common source. The purchaser succeeds to the rights of his
vendor, and the measure of his right is the appropriation made by

1 the vendor, when no change in the place of diversion or application
2 in the use of water follows from such conveyance. When, however,
3 the water-right purchased is sought to be applied upon other lands,
4 the purchaser may change the use to the same extent and as fully as
5 the original water-right holder might do. If such change does not
6 result in decreasing the amount of water available to another water-
right holder under the latter's appropriation, then such change may
be made, otherwise not. A prior appropriator may change his
appropriation from one track to another when he applied water to
lands he owns or possesses, and when this does not involve injury
to another appropriator.

7 *Biggs v. Utah Irrigating Ditch Company*, 7 Ariz. 331, 64 P. 494, 498-499 (1901).²

8 In fact, this common law was recognized in the *Hance v. Arnold* Decree in Article VI
9 where it expressly contemplates sales (i.e. severances and transfers) of water that might be
10 delivered from the Ditch:

11 That the proceeds arising from sales of water should be by the purchasers
12 paid over to the ditch company, and the ditch company in turn account to
13 the owner or owners of the interests upon whose account or accounts such
14 sales shall be made, first charging said interest or interests with it or their
share of the cost of repair and maintenance of the ditch.

15 *Id.*

16 Evidence in the Court's *Hance v. Arnold* files also indicates that water sales (i.e.
17 severances and transfers) indeed occurred, particularly in the early years of the Decree. For
18 instance, the Ditch Commissioner, E.W. Monroe, filed an Application on July 13, 1910, at p. 2,
19 stating the following:

20 That during the deponent's term of office, as had been done for a number
21 of years prior thereto, the ditch company sold one hundred inches of water
22 for \$300 which was applied and credited to the account of said [George]
23 Hance with the ditch company; and an additional fifteen inches of water
24 were sold during said period, and said Hance credited with one-fifth of the
proceeds thereof, all of which was in accordance with the custom which
had been in force among the owners in said ditch for a number of years.

25 ² Notably, *Biggs* was decided by the very same Judge Sloan who also decided the *Hance v.*
26 *Arnold* Decree in 1909.

1 Then in the latter part of 1909, said Hance told deponent in substance that
2 he would not permit the ditch company to continue to sell water for his
3 account, for the reason that he claimed the ditch company would not give
4 him the proceeds, and that thereafter he would handle and sell the water
5 himself and collect the proceeds.

6 The foregoing Affidavit by E.W. Monroe is only one instance of water sales referenced in
7 the Court's *Hance v. Arnold* file but there are likely other instances of water sales that occurred
8 during this early period.

9 It was not until 1919 (10 years after the *Hance v. Arnold* Decree was entered and 7 years
10 after Arizona Statehood) that any formal statutory requirements were imposed for severance and
11 transfer of water rights through the adoption of the first Arizona Water Code. The 1919 Code at
12 § 48 (which was the original source for A.R.S. § 45-172) provided:

13 **§ 48 All water used in this State for irrigation purposes shall remain**
14 **appurtenant to the land upon which it is used; provided, that if**
15 **for any natural cause beyond control of the owners it should at**
16 **any time become impracticable to be [sic] beneficially or**
17 **economically use water for irrigation of any land to which**
18 **water is appurtenant, said right may be severed from said**
19 **land, and simultaneously transferred and become appurtenant**
20 **to other land, without losing priority of right theretofore**
21 **established, if such change can be made without detriment to**
22 **existing rights, on the approval of an application of the owner**
23 **to the Commissioner. Before the approval of such transfer an**
24 **inspection shall be made by the Commissioner or persons**
25 **deputized by him, and the Commissioner shall approve or**
26 **disapprove such transfer and prescribe the conditions therefor.**
 Such order shall be subject to appeal as in this act provided.
 [emphasis added].

21 Laws 1919, Ch. 164, § 48. The 1919 Code acknowledged the common law of severance and
22 transfer which had previously existed and added but one more requirement of obtaining approval
23 from the Commissioner for a severance and transfer, presumably to provide a better system of
24 tracking water rights than had been done before.

1 **B. Application of Arizona Water Law to the *Hance v. Arnold* Decree**

2 The *Hance v. Arnold* Court has retained its continuing jurisdiction to regulate water use
3 from the Verde Ditch including severances and transfers as confirmed by its acknowledgment of
4 severances and transfers under Article VI of the Decree. While it is true that A.R.S. § 45-172
5 presently requires approval from ADWR and from downstream irrigation districts (in this case,
6 SRP) for a severance and transfer of water rights, such approval by ADWR or SRP is not
7 required for Verde Ditch shareholders who have appropriated water prior to 1919 and who have
8 been under the jurisdiction of the *Hance v. Arnold* Court since 1909 for administration of the
9 *Hance v. Arnold* Decree.

10 Pursuant to historic, as well as current Arizona law, the Director of ADWR has never had
11 the authority to supervise the distribution of surface water under the Arizona Water Code where
12 such distribution has otherwise been reserved under existing judgments or decrees. *See* Laws
13 1919, Ch. 164 at § 2 (“The Commissioner shall have general control and supervision of the
14 waters of the State of Arizona and of the appropriation and of the distribution thereof, excepting
15 such distribution as is hereinafter reserved to Water Commissioners appointed by the courts
16 under existing decrees.” [emphasis added]); *see also*, current A.R.S. § 45-103(B) (“The director
17 has general control and supervision of surface water, its appropriation and distribution, and of
18 groundwater to the extent provided by this title, except distribution of water reserved to special
19 officers appointed by courts under existing judgments or decrees.” [emphasis added]). Therefore,
20 the Director of ADWR does not and never has had the authority to require or assert that it has
21 any jurisdiction and right of review or approval over severances and transfers which are already
22 under the *Hance v. Arnold* Court’s jurisdiction.
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1 **C. SRP Does Not Have Any Veto Power Under A.R.S. § 45-172(A)(5) To Usurp**
2 **This Court's Power To Consider And Approve Valid Severances And**
3 **Transfers Among Verde Ditch Lands**

4 The provision contained in A.R.S. § 45-172(A)(5), which today requires pre-approval of
5 severances and transfers from a downstream irrigation district, does give entities like SRP a
6 “veto” power over severances and transfers in a number of circumstances. However, this does
7 not include severances and transfers performed under the jurisdiction of the *Hance v. Arnold*
8 Court. The “veto” provision of A.R.S. § 45-172(A)(5) was not enacted into law until 1962,³
9 almost 100 years after the waters of the Verde River were first appropriated by shareholders in
10 the Verde Ditch and well after the *Hance v. Arnold* Court took jurisdiction over the management
11 of the deliveries of water from the Verde Ditch in *Hance v. Arnold* in 1909.⁴ A.R.S. § 45-171
12 makes it clear that SRP is not entitled to exercise this statutorily created “veto” power against the
13 prior perfected property rights of the shareholders on the Verde Ditch who are already under the
14 continuing jurisdiction of the *Hance v. Arnold* Court where it provides:

15 **Nothing in this chapter shall impair vested rights to the use of**
16 **water, affect relative priorities to the use of water determined**
17 **by a judgment or decree of a court, or impair the right to acquire**
18 **property by the exercise of the right of eminent domain when**
19 **conferred by law. The right to take and use water shall not be**
20 **impaired or affected by the provisions of this chapter when**
21 **appropriations have been initiated under and in compliance**
22 **with prior existing laws and the appropriators have in good faith**
23 **and in compliance with such laws commenced the construction of**
24 **works for application of the water so appropriated to a beneficial**
25 **use and prosecuted the work diligently and continuously, but the**
26 **rights shall be adjudicated as provided in this chapter. [Emphasis**
 added].

22 *Id.*

23

24 ³ See Laws 1962, Ch. 113, § 45-172.

1 Permitting SRP to have this newly created “veto” power pursuant to A.R.S. § 45-
2 172(A)(5), whether it be before ADWR or before this Court, would impair the vested property
3 rights of the Verde Ditch shareholders with regard to their water rights and would give rise to
4 concerns of constitutionality if the statute were interpreted in this manner. The 1919 Legislature
5 plainly recognized this point when it enacted A.R.S. § 45-171 to protect pre-existing water rights
6 under the new statutory scheme being adopted.

7 The often relied on water treatise, *Kinney on Irrigation and Water Rights*, explains why
8 restrictions on transfers of water rights must be limited to give deference to the importance of
9 water rights as property rights:

10 As we have seen, a water right is a property right of the highest
11 character. Therefore, the right of alienation of a water right is one
12 which is based upon the general rights of property, and arises
13 oftentimes out of necessity, in order that injustice might not be done
14 to the owner. The alienation of a water right should not work an
15 abandonment or forfeiture of the right, which is a valid property
16 right and oftentimes of great value, the loss of which would incur
17 great financial loss to the owner. As was held in an Arizona case
18 [citing *Slosser v. Salt River, etc., Co.*, 7 Ariz. 376, 65 Pac. 332, 396-
19 97 (1901)], natural justice, therefore, is subserved by recognizing
20 the right of the water-right holder to change his appropriation to
21 lands capable of profitable cultivation, or to sell his right to another,
22 to be used by the latter for a beneficial use. **To adopt a rule
23 prohibiting the alienation of a water right would be to adopt a
24 more stringent rule than that under the common law**, as riparian
25 rights to the use of the water may be sold or conveyed.

26 *Id.* Vol. II, § 1031, p. 1846 (1912) (emphasis added).

27 The original shareholders of the Verde Ditch relied on existing common law at the time
28 they appropriated the waters of the Verde River (including the common law related to the sale of
29 shares and the severance and transfer of rights). It is therefore clear that any imposition of the
30 subsequently enacted veto power found in A.R.S. § 172(A)(5) that would retroactively and
31 substantively impair these Ditch rights would be unconstitutional. *See San Carlos Apache Tribe*

1 v. *Superior Court*, 193 Ariz. 195, 189, 972 P.2d 179, 205 (1999) (striking down as a violation of
2 the due process clause of the Arizona Constitution multiple provisions of Title 45's adjudication
3 statutes due to their retroactive impairment of substantive vested rights). Of course, the exercise
4 of this same veto power would also run contrary to the Legislature's guarantee provided in
5 A.R.S. § 45-171 that it would not impair vested rights that existed at the time the 1919 Water
6 Code was adopted.

7 Having the Court rule on the jurisdiction of ADWR and the "veto" power of SRP
8 purportedly contained in A.R.S. § 45-172 for severances and transfers already under the
9 jurisdiction of the *Hance v. Arnold* Court is integral to these proceedings. This decision goes to
10 the heart of the Court's ability to administer severances and transfers for shareholders as well as
11 its authority to ensure that its decision on severances and transfers will ultimately be honored by
12 the Adjudication Court – all important conditions for shareholders to understand if they are to
13 make informed decisions as to whether or not they should enter into HWU Agreements and
14 Severance and Transfer Agreements with SRP in the first place.

15 Interestingly, ADWR has not explained why it is willing to defer to the *Hance v. Arnold*
16 Court's severance and transfer process when it has a clear statutory mandate under A.R.S. § 45-
17 172 to consider severances and transfers. It can only be guessed that ADWR believes that the
18 provisions of A.R.S. § 45-171 override ADWR's authority and provide the *Hance v. Arnold*
19 Court with jurisdiction in this instance. Given that there are over 10,000 claimants in the
20 Adjudication who might challenge a severance and transfer conducted under the MOU on the
21 grounds that it was not performed on an application to ADWR in accordance with A.R.S. § 45-
22 172, there is ample reason why the Court should rule now on this issue so as to provide final
23 certainty to the shareholders during this process. To not do so will simply invite additional chaos
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1 to be added to the Adjudication when the time comes to adjudicate the Verde Ditch shareholders'
2 water rights.

3 For the reasons set forth in this Objection #1, the Nation respectfully requests that the
4 Court rule on the applicability of A.R.S. § 45-172 with respect to severances and transfers of
5 water rights in the Verde Ditch prior to any further consideration of the proposed MOU, and
6 conclude that A.R.S. § 45-172(A)(5) does not provide SRP with a veto power over severances
7 and transfers performed under the jurisdiction of the *Hance v. Arnold* Court.

8 **OBJECTION # 2: MOU, Page 1, Recital ¶ D**
9 **SRP's Shares in the Verde Ditch**

10 *D. In addition to SRP's interests as a holder of downstream*
11 *water right claims in the Phoenix area, the District also owns*
12 *approximately 114.48 acres under the Verde Ditch (Assessor's*
Parcel No. 403023-017M) and is the holder of 23.57 shares in
VDC.

13 **A. SRP Lands and Shares Have Not Been Validated by the Court**

14 In the original MOU filed with the Court in December 2014, SRP and VDC did not indicate
15 that SRP had a shareholder interest in the Verde Ditch. *See* Original MOU filed December 1, 2014.
16 When this issue was raised by the Nation in its filings and again at the March 5, 2015, Court
17 hearing, the VDC orally confirmed its understanding that SRP held shares in the Ditch, although the
18 VDC did not provide any specific information pertaining to those shares.

19 While it is good that the Revised MOU now clarifies in Recital ¶ D that SRP does, in fact,
20 assert an ownership interest to shares in the Verde Ditch, the fact that the Revised MOU is now so
21 specific as to recite that SRP "*owns approximately 114.48 acres under the Verde Ditch*" and is the
22 "*holder of 23.57 shares in VCD*" sounds more like a confirmation of rights than a mere
23 acknowledgment of SRP's shareholder status. This is improper. Before the Court approves an
24 MOU containing the specific language relative to SRP's Verde Ditch rights found in Recital ¶ D,
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1 SRP and the VDC should be required to prove the existence of these shares and the lands to which
2 they attach by providing evidence to the Court and allowing others the due process opportunity to
3 controvert that evidence if necessary.

4 To avoid any inference that the Court would be approving a validation of SRP's shares or
5 rights to receive water from the Verde Ditch as part of the MOU (while leaving all other
6 shareholder rights at stake), the Nation suggests that the MOU be revised to remove the specific
7 information as to SRP shares and lands in Recital ¶ D. *See* Redline MOU, Recital ¶ D., attached
8 hereto as **Exhibit A**.

9 In the alternative, if SRP and VDC wish to retain the above-stated language, then the Nation
10 respectfully requests that SRP and VDC be ordered to produce the records upon which they have
11 based their agreement as to the land area and number of shares held by SRP in the Verde Ditch for
12 shareholder review. Thereafter, the Court can hold a hearing to make a factual determination
13 regarding these shares and lands to which the shares attach.

14
15 **B. The Original MOU Exhibit 1 Map Did Not Show SRP Lands with Shares in the**
16 **Ditch and a New MOU Exhibit 1 Map Was Not Included in the Revised MOU**
Filed with the Court

17 In the original MOU filed with the Court on December 1, 2014, SRP and VDC did not show
18 SRP's lands on the MOU Exhibit 1 Map as having any color designation or indicating that SRP had
19 a shareholder interest in the Verde Ditch. *See* Excerpts of Original MOU Exhibit 1 Map and
20 Yavapai County GIS Information related to SRP lands, attached here as **Exhibit C**.

21 Since a Revised MOU Exhibit 1 Map has not been provided along with the revised MOU
22 filed with the Court on June 15, 2015, it is not certain if SRP and VDC have amended the Map
23 accordingly to reflect SRP's interests. The Court should require that the Map attached to the
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1 Revised MOU include SRP's Verde Ditch lands with a color designation (Green, Purple or Orange)
2 consistent with the MOU's treatment of all other shareholders on the Ditch.

3 **OBJECTION # 3: MOU, Page 2, Recital H**
4 **Court's Jurisdiction to Determine Attributes of Water Rights**

5 *H. This MOU is not intended to address or resolve any*
6 *attributes of any water rights other than that Historic Water*
7 *Use exists for particular parcels of land. Issues such as priority*
8 *date, quantity, purpose of use, and season of use are specifically*
9 *left for resolution in some other forum or agreement; provided,*
10 *however, that this MOU does not limit the Hance v. Arnold*
11 *Court's authority, to the extent such authority otherwise exists,*
12 *to address those issues as part of its review and confirmation of*
13 *Historical Water Uses for parcels of land entitled to receive*
14 *water from the Verde Ditch pursuant to the determinations of*
15 *the Hance v. Arnold Court. Nothing in this MOU is intended to*
16 *provide a guarantee to any VDC shareholder or water user that*
17 *its right to use water delivered from the Verde River through the*
18 *Verde Ditch may not be challenged by parties other than VDC*
19 *or SRP, in the Adjudication or otherwise.*

20 By its own admission, Recital H. makes clear that at least one element of a water right,
21 defined in the MOU as "Historic Water Use" (which equals the water rights attribute of
22 "appurtenancy to land" and continued "beneficial use") is intended to be addressed by the MOU.
23 Further, by its very definition and the colors assigned to the various shareholder lands, it appears
24 that SRP and VDC are making legal judgments related to forfeiture and abandonment for those
25 lands and will be requesting the Court to confirm those judgments through the process of the MOU.

26 While the question remains as to whether or not the *Hance v. Arnold* Court has jurisdiction
to make legal determinations related to forfeiture and abandonment of water rights, it is
nevertheless important for the Court to decide at the outset whether or not it has jurisdiction over at
least those attributes of the water rights that are served by the Verde Ditch. This is an important
first step in the MOU process, particularly since the MOU's stated goal is to provide greater
certainty to the shareholders with respect to their water rights.

1 If this Court cannot provide the shareholders with a final and legally enforceable
2 determination as to the lands that are entitled to receive water from the Verde Ditch in accordance
3 with the Court's interpretation and enforcement of the Decree, there truly will be no additional
4 security obtained for the shareholders under the MOU once their rights are to be adjudicated in the
5 Adjudication, as their rights will still be subject to attack in the Adjudication. Thus, the work with
6 the MOU will only add another layer of complication in the Adjudication and further increase the
7 burden on the shareholders to protect their rights in the future.

8 **OBJECTION # 4: MOU, Page 2, ¶ 1**
9 **Incorporation of Exhibits by Reference**

- 10 1. *Incorporation of Recitals and Exhibits. The recitals set forth above and all attached*
11 *exhibits are hereby expressly incorporated and included as part of this MOU.*

12 The revised MOU filed with the Court on June 15, 2015, did not include a copy of the
13 Exhibits to the proposed MOU, despite the fact that these Exhibits are incorporated by reference.
14 As of July 13, 2015, a review of the Verde Ditch Company's website similarly fails to make
15 available electronic copies of either the Revised MOU Exhibit 1 Map or the Exhibit 2 Map, even
16 though the Revised MOU was posted on the website without the Maps included. Since these
17 Exhibits are substantive in nature and will be made part of the MOU, the VDC and SRP should
18 have filed these Exhibits for shareholder review and objections along with filing of the MOU on
19 June 15, 2015. This is a basic requirement of due process. Further, the Court should not be asked
20 by SRP and VDC to approve a document that is not complete or which does not have all of the
21 relevant attachments before the Court.
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1 **OBJECTION # 5: MOU, Page 3, ¶ 4.7**
2 **Final Settlement Agreement Review**

3 4.7. *“Final Settlement Agreement” shall mean, as set forth in*
4 *Section 12, that written settlement agreement regarding Historic*
5 *Water Use for lands served by the Verde Ditch expected to be*
6 *executed by the Parties and submitted to the Hance v. Arnold*
7 *Court for review and approval.*

8 Since the draft form of the Final Settlement Agreement has not been submitted to the Court,
9 its contents remains unknown to the Nation and the shareholders beyond the few recitals contained
10 in the MOU in ¶ 12. See Revised MOU, Page 11, ¶ 12. Prior to the Court approving the Final
11 Settlement Agreement, the Court should ensure that all shareholders have an opportunity to review,
12 comment and potentially object to the terms of the Final Settlement Agreement. See YAN
13 Proposed Order, **Exhibit B** (addressing this due process concern).

14 **OBJECTION # 6: MOU, Page 4, ¶ 4.11**
15 **Definition of Historic Water Use and Concerns Regarding Applicable Law for Severances and**
16 **Transfers Under the Continuing Jurisdiction of the Hance v. Arnold Court**

17 4.11. *“Historic Water Use” or “HWU” shall mean use of the*
18 *waters of the Verde River System through the Verde Ditch that*
19 *was (a) commenced on a particular parcel prior to June 12,*
20 *1919 or (b) commenced after June 12, 1919 pursuant to a*
21 *certificate of water right issued by ADWR or other state agency*
22 *of similar jurisdiction prior to January 1, 2014 or pursuant to a*
23 *severance and transfer of a pre-1919 right approved under*
24 *applicable law.* [emphasis added].

25 This paragraph defines “Historic Water Use” as “the use of waters of the Verde River
26 System”, which is qualified in three ways: (a) pre-1919 uses, (b) post-1919 uses that have
been obtained by following the filing requirements of Arizona statutory law (which became
effective on June 12, 1919), and what should be delineated as (c), pre-1919 water uses that
have obtained a severance and transfer “under applicable law.” The Nation objects to this
provision as set forth below.

1 the Arizona Department of Water Resources (ADWR) has no record of any application for
2 severance and transfer ever being submitted to ADWR under A.R.S. § 45-172 for the parcels
3 involved. *See* August 30, 1991, Stipulation for Severance and Transfer filed and Minute
4 Entry and Order dated August 30, 1991, **Exhibit D**; *see also* ADWR Response to Public
5 Record Request dated March 25, 2015, attached as **Exhibit E**.

6 A review of the *Hance v. Arnold* Court records also does not demonstrate that SRP
7 was ever requested to approve this 1991 severance and transfer under A.R.S. § 45-172(A)(5).
8 Thus, if SRP's interpretation of Arizona law is indeed the proper interpretation (which the
9 Nation refutes), then the *Hance v. Arnold* Court's prior approval of the 1991 severance and
10 transfer was invalid and the lands on which these pre-1919 water right are now being used
11 would not qualify for an Historic Water Use under "then applicable law", because the
12 statutory process of A.R.S. § 45-172, including obtaining SRP's approval of the severance
13 and transfer under A.R.S. § 45-172(A)(5), does not appear to have been followed.⁵ For the
14 reasons discussed in Objection #1, this interpretation of A.R.S. § 45-172 is incorrect.
15

16 **OBJECTION # 7: MOU, Page 5, ¶ 5.1**
17 **Presumptions and Burdens Resulting From "Working Understandings"**

18 *5.1. As part of the negotiation of this MOU, the Parties have*
19 *reviewed and shared their records regarding (a) which lands*
20 *are currently receiving and using water from the Verde Ditch,*
21 *(b) which lands served by the Verde Ditch have Historic Water*
22 *Use, (c) which lands are owned by individuals or entities who*
23 *possess shares to the Verde Ditch based upon Hance v. Arnold,*
24 *and (d) which lands are entitled to receive water based upon*
25 *the historical records of VDC and SRP. [emphasis added].*

26 ⁵ This, of course, raises similar concerns for validity of historic water sales (i.e. severances and transfers) potentially conducted in the early years of the Decree after the 1919 Water Code was adopted.

1 While ¶ 5.1 is part of the “Working Understandings” section of the MOU, this language
2 strongly infers that VDC and SRP have pre-determined which lands are entitled to receive water
3 from the Verde Ditch. Because this appears to have shifted the burden to the shareholders to
4 overcome this pre-determination, the Nation objects to ¶ 5.1 as written.

5 It is the Nation’s understanding that the Court intends to implement a process through which
6 it will be the sole authority to make the final determination as to which lands are entitled to receive
7 water from the Verde Ditch under the *Hance v. Arnold* Decree. Because the Court is being asked as
8 part of this process to approve the MOU, the Court should be careful that its adoption of the
9 language in ¶ 5.1 does not create any unfair presumptions or unwarranted burdens of proof that the
10 shareholder will subsequently be required to overcome to receive water from the Ditch. The Nation
11 has proposed a modification to ¶ 5.1 to address this concern in the Nation’s Redline MOU (**Exhibit**
12 **A**) and in the YAN Proposed Order (**Exhibit B**).

13 **OBJECTION # 8: MOU, Page 6, ¶ 5.4**

14 **The Final Working Understandings and Map Should be Submitted to the Court and**
15 **Flexibility for Setting Deadlines Should be Reserved to the Court**

16 *5.4. The Parties recognize and acknowledge that individual*
17 *water users on the Verde Ditch or others might have*
18 *information that would conflict with or supplement the*
19 *information upon which the Parties have utilized in the review*
20 *and compilation of Verde Ditch HWU Lands, Green Lands,*
21 *Purple Lands, and Orange Lands. The Parties agree to review*
22 *any additional information in good faith and, upon a common*
23 *determination by the Parties that one or more aspects of a*
24 *Working Understanding were incorrect or incomplete, to modify*
25 *this MOU to reflect a revised Working Understanding, to*
26 *inform the Hance v. Arnold Court to that effect in writing, and*
to proceed accordingly as set forth in this MOU.
Notwithstanding any provision herein, nothing provided
herein shall limit or restrict any user of water from the Verde
Ditch from presenting information or supplemental
alternatives or evidence to the Hance v. Arnold Court for
consideration at an evidentiary hearing or hearings set for that

1 *purpose prior to (a) the termination or expiration of this MOU*
2 *or (b) December 31, 2018, whichever occurs first. In the event*
3 *the Parties are unable to reach a common determination, the*
4 *information compiled shall be submitted to the Hance v. Arnold*
5 *Court for consideration. [emphasis added].*

6 The Nation objects to the language found in ¶ 5.4 as follows:

7 **A. A Final Set of Working Understandings and Map Should be Submitted to**
8 **the Court to Allow the Court to Begin Its Process of Determining Lands**
9 **Entitled to Water Service from the Verde Ditch**

10 As a general matter, the Nation objects to ¶ 5.4 because it is vague and fails to outline
11 a clear process as to when shareholders will be informed of any changes to the Working
12 Understandings or when they will have the ability to comment and object to such changes.
13 The Nation suggests that ¶ 5.4 be revised to clarify that SRP and VDC should be required to
14 complete and submit a final set of Working Understandings and Map to the Court showing
15 their analysis of the status of each shareholder's lands and Ditch rights. Thereafter, a copy
16 should be mailed to all interested parties on the Court-approved mailing list before the Court
17 begins the process of taking evidence on specific shareholder rights and makes a final
18 determination as to which lands are entitled to water service from the Verde Ditch. *See*
19 *Redline MOU, Exhibit A, and YAN Proposed Order, Exhibit B, addressing this concern and*
20 *providing a clear process for shareholders to understand.*

21 **B. The Court Should Preserve Its Flexibility to Set Dates and Deadlines for**
22 **Determining Which Lands are Entitled to Water Service from the Verde**
23 **Ditch**

24 Paragraph 5.2 of the MOU also sets hard deadlines for the Court to abide by in taking
25 evidence from the shareholders regarding their water rights, including requiring the Court to
26 have evidentiary hearings either before December 31, 2018 or prior to the expiration or
termination of the MOU. These deadlines that may be unachievable under certain
circumstances. For instance, if this MOU were to be approved, but then terminated early for

1 some reason (pursuant to ¶ 3 of the MOU), it might be impossible for the Court to comply
2 with the terms of the MOU to take evidence regarding shareholder rights. It would be more
3 proper to rephrase how the Court will handle taking evidence on shareholder rights in this
4 paragraph and to also specifically include information to the shareholders in the Proposed
5 Order regarding how the Court will handle shareholder evidence in this process. *See* Redline
6 MOU, **Exhibit A**, and YAN Proposed Order, **Exhibit B**, addressing this concern and providing a
7 clear process for shareholders to understand.

8 **OBJECTION # 9: MOU, Page 7, ¶ 5.5**
9 **Process and Fees for Obtaining Information and Documents**

10 *5.5. In conjunction with the compilation and review of*
11 *additional information in Subsection 5.4, the Parties agree to*
12 *provide information obtained through the process to any VDC*
13 *shareholder or landowner upon request, unless such*
14 *information is exempt from disclosure by attorney-client*
15 *privilege or other applicable privilege. In the event of such a*
16 *request, the Party receiving the request shall be entitled to*
17 *such reimbursement of any costs or established charges for*
18 *providing the information to a requesting shareholder.*
19 *[emphasis added].*

20 To ensure a fair and equitable process, particularly where the process will ultimately
21 result in the Court making a final determination on individual shareholders' rights to receive
22 water from the Verde Ditch, access to the information being relied upon by SRP and VDC or
23 the Court is critical. Indeed, for any disputes related to land status and the right to receive water
24 from the Ditch, where such disputes will be addressed in evidentiary hearings before the Court,
25 the Arizona Rules of Civil Procedure (ARCP) will apply, including Arizona's liberal rules
26 relating to discovery and disclosure. Under the ARCP, the assessment of fees for providing
disclosure and obtaining discovery between parties to an action is limited. *See, e.g.,* ARCP 26
(setting forth Arizona's general rules of discovery).

1 The Nation therefore objects to the language found ¶ 5.5 because it fails to provide
2 sufficient guidance or standards pertaining to the assessment of costs to shareholders who need
3 to obtain information and records in this case. As written, ¶ 5.5 is inconsistent and adverse to
4 the requirements of ARCP Rule 26.

5 In light of the circumstances of this case and the proposed MOU, the Nation suggests
6 that the Court require the Parties to submit a detailed proposal that clearly sets forth how and
7 when fees and costs can be assessed against a requesting shareholder seeking to obtain
8 information and documents from the VDC and SRP. The proposal might also provide direction
9 from the Court as to the specific process it would like the Parties to follow when either
10 requesting information or upon receiving requests for information, which could then be
11 incorporated into the Court's Order pertaining to the MOU. *See* Redline MOU, **Exhibit A**, and
12 YAN Proposed Order, **Exhibit B** (providing the Nation's suggestions as to how to potentially
13 resolve some of these concerns).
14

15 **OBJECTION # 10: MOU, Page 7, ¶ 6.1**

16 **Purple Lands are Missing from SRP Waiver and SRP Would Not Provide a Waiver Even if**
17 **the *Hance v. Arnold* Court Were to Rule that Certain Purple and Orange Lands are**
Entitled to Water Service from the Ditch

18 *6.1. During the time between the Execution Date of this MOU*
19 *and the date when the Final Settlement Agreement entered into*
20 *pursuant to Section 12 becomes effective, SRP agrees to not*
21 *contest, in any Proceeding, the existence of Historic Water Use*
22 *for (a) Green Lands or (b) Orange Lands for which Severance*
and Transfer Agreements have been executed, approved by the
Parties and the Hance v. Arnold Court, and recorded.
[emphasis added].

23 **A. No Certainty Will be Achieved for Purple Lands and Orange Lands Without**
24 **Severance and Transfer Agreements Even If The Court Decides this Issue**
25
26

1 The Nation objects to ¶ 6.1 for a number of reasons. As an initial matter, it is unclear why
2 SRP and VDC failed to include Purple Lands in ¶ 6.1 along with the other lands for which SRP
3 agrees it will not contest Historic Water Uses during the period of time outlined in the paragraph.
4 Regardless of the reason, the legal effect of leaving Purple Lands out of ¶ 6.1 is to place all Purple
5 Lands at risk of challenge by SRP during the time between the Execution Date of the MOU and
6 approval of the Final Settlement Agreement. In addition, Orange Lands that have not secured
7 Severance and Transfer Agreements with SRP will also remain subject to challenge by SRP during
8 this interim period.⁶

9 In addition to the foregoing, a review of the Revised MOU reveals that even if the *Hance v.*
10 *Arnold* Court were to determine that some of all of the Purple or Orange Lands without final
11 Severance and Transfer Agreements were in fact entitled to water service from the Ditch, the Final
12 Settlement Agreement does not prevent SRP from challenging the water rights for those lands in
13 other forums, such as in the Gila River Adjudication, because this right is specifically preserved by
14 SRP in the language contained in ¶ 6.1 and ¶ 12.2 of the MOU. This approach would seem to be
15 contrary to the Court's goal of trying to finally resolve matters between SRP and the shareholders
16 and to provide future certainty for the shareholders on the Ditch.

17
18 **B. SRP Previously Lacked a Forum to Contest Verde Ditch Water Rights Prior to**
19 **the Adjudication but the MOU Will Now Provide a Means for SRP to**
20 **Challenge Certain Aspects of Those Rights While Still Preserving Its Ability to**
Again Challenge Those Rights Later On in the Adjudication

21 It is noteworthy that absent this forum, SRP does not otherwise have a clear means to
22 dispute the Historic Water Use of Green, Purple or Orange Lands, because the Gila River

23 ⁶ It should also be noted that both the Purple Lands and Orange Lands that do not have a Severance
24 and Transfer Agreements will continue to be subject to challenge by SRP even after a Final
25 Settlement Agreement is reached between VDC and SRP by virtue of similar language contained in
26 the Revised MOU at paragraph 12.2. *See* MOU, Page 11, ¶ 12.2.

1 Adjudication has not yet begun to take up the matter of adjudicating Verde River water rights, and
2 SRP is unable to obtain preliminary injunctions against the Verde Ditch shareholders as a result of
3 an order issued by the Adjudication Court on August 11, 2004. *See* Gila River Adjudication Order
4 dated August 11, 2004, attached as **Exhibit F**.

5 The August 11, 2004 Order states that preliminary injunctions will not be issued by the
6 Adjudication Court unless SRP could show that a water user did not have a “colorable claim” to
7 water rights. The Adjudication Court went on to define “colorable claim” by stating that as long as
8 the water user had filed a water rights claim in the Adjudication for that particular use, an injunction
9 would not be issued. *Id.* at 3 (“a ‘colorable claim’ at a minimum, includes water rights claims
10 existing prior to or after June 12, 1919, for which relevant filings or documentation were on file
11 with the Arizona Department of Water Resources...”). Because the VDC has filed the Statement of
12 Claimant on behalf of the Verde Ditch water users in the Adjudication, and thereby arguably
13 established a “colorable claim” for the shareholders, SRP might find it difficult to obtain a
14 preliminary injunction against the Ditch shareholders in the Adjudication before the Adjudication
15 takes up the water rights of the Verde Ditch shareholders.
16

17 However, if the Court approves the MOU and sets up the process for taking evidence
18 regarding Historic Water Use for shareholder lands, the Court will be providing SRP with a forum
19 it does not presently have to dispute the Historic Water Use of Purple and Orange Lands (ironically,
20 contrary to the Adjudication Court’s August 11, 2004, Order). But even then, SRP would be
21 expressly preserving its ability to take another, later “bite at the apple” for those *Hance v. Arnold*
22 Court determinations related to Purple and Orange Lands, because the MOU and Final Settlement
23 Agreement as written preserve SRP’s ability to contest Historic Water Use for those Purple and
24
25
26

1 Orange Lands without Severance and Transfer Agreements in the Adjudication. *See* MOU, ¶ 6.1, ¶
2 12.2. How this meets the Court's goals for certainty is difficult to decipher.

3 The Nation recommends that the MOU be amended to require that (1) SRP also agree not to
4 contest Purple Lands and Orange Lands during the interim period contemplated by ¶ 6.1, (2) SRP
5 agree to accept the final determinations of the *Hance v. Arnold* Court regarding whether the Purple
6 and Orange Lands have Historic Water Use and whether or not the Purple and Orange Lands are
7 entitled to water service from the Verde Ditch, and (3) SRP agree that after the Final Settlement
8 Agreement is entered, it will not contest this Court's final determination of Historic Water Use in
9 any forum, including, but not limited to, the Gila River Adjudication. *See* Redline MOU, **Exhibit**
10 **A**, ¶ 6.1, ¶ 12.2, and ¶ 5.4.04, addressing this concern. Anything short of this approach fails to
11 provide the certainty that has been the long stated goal of the MOU process.

12 **OBJECTION # 11: MOU, Page 7, ¶ 7.1 – Green Lands Not At Significant Risk**

13
14 *7.1. Upon and after the Execution Date, the Parties agree to*
15 *work cooperatively and to meet with individual water users on*
16 *the Verde Ditch who own Green Lands, in order to achieve*
agreement upon the existence of Historic Water Use for those
Green Lands.

17 As a general comment, if SRP and the VDC already agree that the Green Lands
18 delineated on the MOU's Exhibit 1 Map presently have Historic Water Use on such lands, there
19 is very little risk to those shareholders who have Green Lands or their rights to continue to
20 receive water from the Verde Ditch. This likely limits the overall value of entering into an
21 HWU Agreement with SRP for Green Lands, particularly since such an agreement would
22 implement new restrictions for Green Lands, such as subjecting such lands to SRP's veto power
23 over severances and transfers. Indeed, as a practical matter, all that remains to be done for those
24 Green Lands would be for the *Hance v. Arnold* Court to set up a period of time for filing any
25
26

1 objections from any other shareholders as to the characterization of such lands as “Green”, and,
2 after addressing any objections to the contrary, such Green Lands would simply be confirmed by
3 the *Hance v. Arnold* Court as having a continuing entitlement to receive water service from the
4 Verde Ditch. The additional steps required by the MOU are unnecessary and unwarranted in the
5 Nation’s view.

6 **OBJECTION # 12: MOU, Page 7, ¶ 7.2 – Severance and Transfers with SRP Veto Power**
7 **and Concerns Related to Future Ditch Management**

8 *7.2. Upon achieving agreement with an owner of Green*
9 *Lands, the Parties and the landowner will execute an HWU*
10 *Agreement. In the HWU Agreement, SRP shall agree, in*
11 *writing, to not contest the existence of Historic Water Use for*
12 *the Green Lands at issue in that agreement in any Proceeding.*
13 *Also in the HWU Agreement, the owner of the Green Lands*
14 *shall agree, in writing, (a) to not claim Historic Water Use*
15 *relating to water delivered through the Verde Ditch for any*
16 *other lands on the parcel in question (as the scope of that parcel*
17 *is defined in the HWU Agreement) as against SRP in any*
18 *Proceeding; (b) to not sell, transfer, or otherwise convey any*
19 *VDC shares to another parcel unless such conveyance is made*
20 *in conjunction with a severance and transfer performed*
21 *pursuant to the procedures set forth in this MOU and as*
22 *governed by the Hance v. Arnold Court; and (c) to not expand*
23 *water use from the Verde Ditch on the parcel except in*
24 *conjunction with a severance and transfer as set forth in this*
25 *MOU and as governed by the Hance v. Arnold Court.*

19 As discussed in detail in Objection #1, it is the Nation’s position that SRP, as a downstream
20 irrigation district, does not currently hold a veto power under A.R.S. § 45-172(A)(5) over a Verde
21 Ditch shareholder’s ability to sever and transfer water rights within the Verde Ditch service area
22 where the Ditch rights are pre-1919 rights and are currently under the jurisdiction of the *Hance v.*
23 *Arnold* Court.

1 Although this discrete legal issue has not yet been resolved in Arizona's court system, it is
2 the Nation's position that nothing in A.R.S. § 45-172 precludes the *Hance v. Arnold* Court from
3 reviewing and approving severances and transfers of Verde Ditch rights where such severance and
4 transfers occur wholly within lands encompassed by the Verde Ditch service area. However, where
5 a shareholder having Green Lands voluntarily enters into an HWU Agreement with SRP pursuant to
6 ¶ 7 of the MOU, the owner is restricting any future ability to sever and transfer Verde Ditch rights
7 from one parcel to another, or even on the same parcel, without first obtaining SRP permission to
8 do so. Essentially, the shareholder has waived its right to assert that A.R.S. § 45-172(A)(5) does
9 not apply to *Hance v. Arnold* decreed lands.

10 This kind of agreement could also restrict the *Hance v. Arnold* Court from separately
11 approving severances and transfers that may be necessary in the future to maintain the efficient
12 operations of the Verde Ditch, since SRP would have the right (regardless of the Court's concerns
13 for the operation of the Ditch) to exercise its newly acquired veto power over those shareholders of
14 Green Lands that have previously entered into HWU Agreements with SRP. It is important for the
15 Court, as the Master of the Ditch, to protect all shareholders in its administration of the Ditch. In
16 addition, if severances and transfers can be prevented through an SRP veto power, over time, there
17 will likely be a decline in the amount of lands and total acreage entitled to water service under the
18 Ditch, which in turn, increases the overall costs of operating and maintaining the Ditch for the
19 remaining users on the Ditch.

20
21 Finally, in a "bigger picture" sense, emboldening SRP's veto power through voluntary
22 HWU Agreements may over time have the consequence of "ratcheting down" the total overall
23 exercise and use of water rights available in the Verde Valley as a whole. This is because SRP will
24 now have the legal right to veto proposed severances and transfers of water rights from lands that
25
26

1 have become unusable or un-productive (for whatever reason) to other lands where the use of water
2 would be productive and thus, support the continued beneficial use of the water right under Arizona
3 law. In this way, water rights once beneficially used in the Verde Valley could become
4 permanently lost and the water needed to fulfill these rights will flow downstream to the next
5 appropriator in line, including SRP in the Phoenix metropolitan area.

6 The MOU has been promoted by SRP and VDC as a means to provide certainty for
7 shareholders about their water rights and to protect property values. However, where HWU
8 Agreements are entered into and recorded, it is unclear at this point whether the trade off will, in
9 fact, result in certainty for shareholders' water rights going forward. In addition, the recordation of
10 the HWU Agreements will place prospective buyers on notice that upon purchasing the lands, they
11 will have little ability to sever and transfer water rights on the Ditch without obtaining SRP
12 permission first. This restriction may have the opposite result for property values than originally
13 promoted by SRP and VDC.

14 **OBJECTION # 13: MOU, Page 8, ¶ 7.3**

15 **Providing Clarification to Shareholders of the Court's Treatment of HWU Agreements and**
16 **Their Legal Effect**

17 *7.3. Upon execution by all necessary parties of an HWU*
18 *Agreement for a particular parcel of Green Lands, the HWU*
19 *Agreement shall be recorded in the real property records of the*
Yavapai County Recorder.

20 The Nation objects to ¶ 7.3 because it fails to make clear to shareholders that the HWU
21 Agreements are only contractual agreements between SRP and the individual shareholder and that
22 the *Hance v. Arnold* Court will not be considering them for approval. Additionally, the Court
23 should make clear to the shareholders that if a future severance and transfer is sought and an HWU
24 Agreement is in place for that parcel, the Court will be obligated to abide by the terms of the
25 agreement. Thus, for example, if a shareholder seeks a future severance and transfer for the lands
26

1 served by the Verde Ditch and an HWU Agreement is in place for those lands, the *Hance v. Arnold*
2 Court will not be permitted to approve such a severance and transfer without the proponent of the
3 transfer obtaining SRP permission first. These points should be clarified in the MOU and Proposed
4 Order. *See* YAN Proposed Order, **Exhibit B**.

5 **OBJECTION # 14: MOU, Page 8, ¶ 8.2**
6 **Providing Clarification to Shareholders of Alternatives for Severances and Transfers**

7 *8.2. The Parties anticipate that, upon agreement between two*
8 *willing participants regarding a severance and transfer, the*
9 *participants will execute a Severance and Transfer Agreement.*

10 The Nation objects to ¶ 8.2 because it is important that shareholders understand that they
11 are not required to enter into the Severance and Transfer Agreements contemplated by ¶ 8.2,
12 but rather, may independently seek approval of their own severance and transfer proposal from
13 the *Hance v. Arnold* Court. The MOU fails to make these alternatives clear and, if not made
14 clear in the MOU, the Proposed Order should make this important distinction for the
15 shareholders. *See* YAN Proposed Order, **Exhibit B**.

16 However, as discussed in detail earlier in these objections, the question of whether or not
17 SRP can exercise the veto power enumerated in A.R.S. § 45-172(A)(5) over severances and
18 transfers within the jurisdiction of the *Hance v. Arnold* Court remains to be decided. Shareholders
19 are therefore left with little guidance as to what the best course of action might be to accomplish a
20 severance and transfer for their lands if they choose not to enter into HWU Agreements and
21 Severance and Transfer Agreements with SRP. Indeed, the 1991 severance and transfer by this
22 Court remains in legal limbo because of this issue. *See* Objection #6 and 1991 Severance and
23 Transfer Documents, **Exhibit D**.

1 **OBJECTION # 15: MOU, Page 8, ¶ 8.3**

2 **SRP Should Agree that It Will Not Object to Intra-Ditch Severances and Transfers under**
3 **A.R.S. § 45-172(A)(5), If the Severance and Transfer is Reviewed and Approved by the *Hance***
4 ***v. Arnold* Court**

5 *8.3. Any severance and transfer pursuant to Section 8 shall*
6 *be subject to the prior written consent of SRP and the Hance v.*
7 *Arnold Court. The request for SRP's consent will be submitted*
8 *to the District Board of Directors and the Association Board of*
9 *Governors concurrently with a Severance and Transfer*
10 *Agreement executed by the landowners involved and any other*
11 *forms required by SRP for such purposes.*

12 Like other MOU provisions discussed here, ¶ 8.3 also cements SRP's veto power over
13 future severances and transfers on the Ditch through contractual agreements between SRP and the
14 shareholder signing the HWU Agreement. Once complete, the Court will be obligated to honor that
15 contractual arrangement in managing future operations of the Verde Ditch. While ¶ 8.3 is in line
16 with SRP's position that it already has a veto power over severances and transfers on the Ditch
17 under A.R.S. § 45-72(A)(5) and thus, the status quo is not changed by the Court's approval of the
18 MOU, the Nation respectfully disagrees with this characterization of the legal affect of A.R.S. ¶ 45-
19 172(A)(5) vis-à-vis the *Hance v. Arnold* Decree. See Objection # 1.

20 As an alternative to ¶ 8.3, SRP should agree that it will not exercise a veto power in those
21 instances where the *Hance v. Arnold* Court agrees to review and approve severances and transfers
22 within the original lands encompassed by the *Hance v. Arnold* Decree, provided that SRP would
23 still have the right to contest any proposed severance and transfer before the *Hance v. Arnold* Court
24 and have its objections heard like any other shareholder. Because the *Hance v. Arnold* Court would
25 be the ultimate arbiter of severances and transfers in this scenario, SRP can be assured that any
26 application for severance and transfer received by the Court will be thoughtfully and carefully
reviewed. At the same time, this approach will preserve the Court's ability to effectively manage

1 deliveries of water from the Verde Ditch and other unexpected aspects of administering the *Hance*
2 *v. Arnold* Decree. See Redline MOU, Exhibit 1, at ¶ 8.3.

3 **OBJECTION # 16: MOU, Page 8, ¶ 8.4**

4 **The Process Should Be Clarified Now for Shareholders Regarding How the Court Will
Address Severances and Transfers**

5 *8.4. Any severance and transfer pursuant to this Section 8*
6 *shall be subject to review and approval by the Hance v. Arnold*
7 *Court, after providing notice and an opportunity to be heard as*
8 *deemed appropriate by the Hance v. Arnold Court. As a matter*
9 *of accommodation and convenience, on or before February 15*
10 *of each year, the Parties will coordinate the filing of a combined*
11 *severance and transfer application with the Hance v. Arnold*
12 *Court to seek approval of severance and transfers that have*
13 *been agreed to between owners of the lands affected for the*
14 *prior calendar year. This provision shall not preclude the*
15 *Parties or individual landowners from individually filing*
16 *severance and transfer applications with the Hance v. Arnold*
17 *Court during the course of the calendar year, but the Parties*
18 *will work cooperatively to submit one combined annual filing, to*
19 *the extent possible, on or before February 15 of each year if*
20 *severance and transfers exist for which applications have not*
21 *otherwise been submitted to the Hance v. Arnold Court prior to*
22 *that date. [emphasis added].*

23 As previously discussed, the Proposed Order should outline a transparent process for
24 providing notice to the shareholders and an opportunity to be heard for proposed severances and
25 transfers in accordance with the requirements of due process. The Nation objects to ¶ 8.4 because it
26 fails to contemplate such a transparent approach. See YAN Proposed Order, Exhibit B.

27 **OBJECTION # 17: MOU, Pages 8-9, ¶ 8.5**

28 **The Need for Clarification on Types of Rights Which May Be Severed and Transferred and**
29 **Under What Authority; Need for Updating VDC Statement of Claimant with ADWR to Make**
30 **a Record of Approved Severances and Transfers for Purposes of the Adjudication**

31 *8.5. Promptly upon execution a Severance and Transfer*
32 *Agreement for a particular transfer from Purple or Green Lands*
33 *to Orange Lands, consent to such severance and transfer by*
34 *SRP, and approval of the severance and transfer by the Hance*
35 *v. Arnold Court, the records of VDC will be amended to reflect*

1 *such changes and the Transferor shall cause the Severance and*
2 *Transfer Agreement to be recorded in the real property records*
3 *of the Yavapai County Recorder. The Transferee may proceed*
4 *with any necessary filings with ADWR, but nothing in this*
5 *MOU requires any filing with ADWR if it is not otherwise*
6 *required under applicable law. [emphasis added].*

7 **A. Clarifying How Severances and Transfers May Be Conducted to Provide Legal**
8 **Certainty to Shareholders**

9 The Nation objects to ¶ 8.5 because it provides little guidance to the shareholders on what
10 they need to do to ensure their transferred water rights are secure, since it remains legally uncertain
11 as to whether a shareholder needs to file an application with ADWR for a severance and transfer
12 under A.R.S. § 45-172. For intra-Ditch pre-1919 transfers (Ditch land to Ditch land), both of which
13 are already under the jurisdiction of the *Hance v. Arnold* Court, no ADWR application or approval
14 is required, as discussed in detail in Objection # 1. But for severances and transfers involving lands
15 and water rights outside of the original lands encompassed by the *Hance v. Arnold* Decree (non-
16 Ditch land to Ditch land or vice versa, whether the severance and transfer is conducted under the
17 MOU or independently) the process prescribed by A.R.S. § 45-172 may be required since the
18 *Hance v. Arnold* Court does not have original jurisdiction over certain of those lands or water
19 rights. See YAN Proposed Order, Exhibit B, for suggested language.

20 **B. Requiring the VDC Statement of Claimant File to Be Updated in the**
21 **Adjudication for Approved Severances and Transfers**

22 Simply recording a severance and transfer in the real property records for the county will
23 not ensure that ADWR or the Adjudication Court has the necessary notice of such severances and
24 transfers when these rights are to be adjudicated by the Adjudication Court. As an additional step,
25 the VDC should be required to file all severance and transfers approved by the *Hance v. Arnold*
26 Court (whether through the MOU process or independent of the MOU process) in the Verde Ditch
 Company's Statement of Claimant filed in the Adjudication so that ADWR can properly account

1 for those severances and transfers when it prepares the technical information for the Adjudication
2 Court related to these Ditch rights. *See* A.R.S. § 45-256 (outlining ADWR's role as technical
3 advisor to the Adjudication Court). *See* Redline MOU, ¶ 8.5, **Exhibit A**.

4 **OBJECTION # 18: MOU, Page 9, ¶ 8.6**
5 **Severances and Transfers with SRP Veto Power and Concerns Related to Future Ditch Management**

6 *See* Objection # 12 above. The Nation has the same concerns with ¶ 8.6 as with ¶ 7.2.

7 **OBJECTION # 19: MOU, Page 9, ¶ 8.7**
8 **Need for Clarifying How Severances and Transfers May Be Conducted to Provide Legal Certainty to Shareholders**

9 *8.7. Nothing contained herein shall preclude or prohibit an*
10 *individual landowner from pursuing all rights and remedies to*
11 *obtain a severance and transfer independent of the process set*
12 *forth herein under state law. However, neither Party is obliged*
13 *to approve a severance and transfer but shall use good-faith*
14 *efforts in consideration of any such transfer. In the event either*
Party receives an application for a severance and transfer
affecting an Historic Water Use served by the Verde Ditch, the
Party receiving the application will provide notice to the other.

15 The Nation continues to object that shareholders have not been provided any
16 information on how they are to go about perfecting a severance and transfer “under state law”,
17 independent of the process outlined in the MOU. ¶ 8.7 does nothing to solve this problem,
18 particularly in light of the unresolved legal issues related to the requirements for severances and
19 transfers, as discussed at Objection # 1. While the shareholders on the Ditch have been advised
20 by the VDC to obtain their own legal counsel regarding any questions or concerns they might
21 have about this process, the Court must recognize that with more than 400 shareholders, it is
22 unrealistic for every shareholder to retain qualified legal counsel for this matter. In addition,
23 many of the shareholders simply lack the resources retain a lawyer, even if they could find a
24 lawyer qualified in this aspect of the law. The Court must, therefore, be mindful that its
25
26

1 consideration of the MOU on behalf of the shareholders is vitally important at this point in the
2 process. So to is the wording of the Court's Order, which should provide clear direction to the
3 shareholders on their rights and responsibilities under the MOU and any alternatives to which
4 they may be entitled in relation to the severance and transfer options. *See Redline MOU,*
5 **Exhibit B.**

6 **OBJECTION # 20 MOU, Page 11, ¶ 10**
7 **Non-Retroactivity or Modification of Prior Assessments**

8 *10. Reconciliation of Verde Ditch Shares. Upon approval by*
9 *the Hance v. Arnold Court of a severance and transfer*
10 *application, VDC shall, subject to the Court's approval,*
11 *reconcile the respective shares in the Verde Ditch with the*
12 *associated Historic Water Use existing after approval of the*
13 *severance and transfer applications. Nothing contained herein*
14 *shall modify or amend any assessment or charge by VDC*
15 *retroactively or modify the existing Rules and Regulations of*
16 *VDC as to continuation of assessments.*

17 The Nation agrees with the language of ¶ 10. However, it will be important for this
18 language to be included in the Court's Order in order to ensure that shareholders are fully
19 informed and aware of the legal effect of the MOU on their water rights and ditch
20 assessments. *See Revised Order, Exhibit B.*

21 **OBJECTION # 21: MOU, Page 11, ¶ 12.1**
22 **Concern Regarding Court's Jurisdiction and Whether or Not Court is Determining an**
23 **Attribute of a Water Right that Otherwise Should be Heard Before the Adjudication Court**

24 *12.1. Upon approval by the Hance v. Arnold Court of*
25 *severance and transfer applications to provide Historic Water*
26 *Use for eighty (80) percent of the Orange Lands and execution*
and recording of HWU Agreements for eighty (80) percent of
the Green Lands, the Parties shall prepare and submit to the
Hance v. Arnold Court for its approval a written Final
Settlement Agreement settling all Historic Water Use for such
lands among the Parties. The Hance v. Arnold Court's
approval of the Final Settlement Agreement will conform the
existing judgment in Hance v. Arnold pursuant to the Court's
continuing jurisdiction to enforce and interpret the judgment

1 *but shall not be deemed an adjudication of the water rights for*
2 *any particular parcel of land that would otherwise be*
 determined in the Adjudication. [emphasis added].

3 The same concern expressed in Objection #3 arises in ¶ 12.1 where the MOU explicitly
4 states that the Final Settlement Agreement, which would purportedly describe the lands entitled to
5 receive water from the Ditch, would not be an adjudication of water rights that would otherwise be
6 determined in the Adjudication. Does this mean that “Historic Water Use” which is an attribute of
7 a water right will not be finally determined by the *Hance v. Arnold* Court but rather must wait for
8 final determination in the Adjudication? Or does this paragraph mean that the *Hance v. Arnold*
9 Court has the jurisdiction to determine this attribute of the water right and that only the remaining
10 attributes will be “otherwise determined in the Adjudication”? The question of how this paragraph
11 is interpreted fundamentally hangs on whether the Court decides it has retained jurisdiction under
12 the *Hance v. Arnold* Decree over water rights, or at least the “Historic Water Use” attribute of the
13 water right, and is therefore the ultimate decider, or if the Court’s decision making regarding the
14 lands entitled to service from the Ditch as “Historic Water Rights” are again to be reviewed a
15 second time and subject to challenge in the Adjudication.
16

17 To avoid adding more layers of confusion and complication to the shareholders in
18 understanding their rights, the Nation submits that the Court should decide the scope of its authority
19 to determine water rights in light of the pending Gila River Adjudication to resolve this issue once
20 and for all. *See also* Recital H. discussion above in Objection # 3.

21 **OBJECTION # 22: MOU, Page 11, ¶ 12.2**

22 **No Resolution under the MOU for Purple and Orange Land Owners without Severance and**
23 **Transfer Agreements**

24 12.2 *In the Final Settlement Agreement, SRP shall agree, in*
25 *writing, to not contest, in any Proceeding, the existence of*
26 *Historic Water Use for (a) Green Lands for which HWU*
 Agreements have been executed and recorded and (b) Orange

1 *Lands for which Severance and Transfer Agreements have been*
2 *executed, approved by the Parties and the Hance v. Arnold*
3 *Court, and recorded.*

4 As previously discussed in Objection #10 regarding ¶ 6.1 of the MOU, this provision
5 would allow SRP to continue to contest Purple Lands and Orange Lands that lack Severance
6 and Transfer Agreements, which does not provide certainty for these landowners as part of the
7 MOU process. The Court can provide this certainty by making its own determination as to
8 which lands under the Ditch have an Historic Water Use. SRP, in turn, should agree to accept
9 the Court's determination in the MOU. *See* Redline MOU, **Exhibit A**, ¶ 12.2 for proposed
10 revision.

11 **OBJECTION # 23: MOU, Page 12, ¶ 12.3**

12 **The Definition of "SRP Rights" Must be Bound in Time for the VDC Agree to Not Contest**
13 **Such "Rights", Which Also Include "Claims"**

14 12.3. *In the Final Settlement Agreement, VDC shall agree, in*
15 *writing, to not contest the existence of the SRP Rights in any*
16 *Proceeding.*

17 The Nation objects to ¶ 12.3 as written. "SRP Rights" are defined in ¶ 4.21 as "any rights
18 or claims to rights to use water on land included within the Salt River Reservoir District, a map of
19 which is set forth in Exhibit 2, regardless of whether such rights are claimed or held by the District,
20 the Association, or Association shareholders." *Id.* [emphasis added]. Claimants in the Gila River
21 Adjudication are permitted to amend their Statements of Claimant forms at any time during the
22 Adjudication until 90 days before the issuance of a final hydrographic survey report. *See* A.R.S. 45-
23 254(E)(1) ("At any time up to ninety days before the publication of the director's final report...a
24 person may file a statement of claimant of an amendment to a statement of claimant with the
25 director without leave of the court.").
26

1 Under ¶ 12.3 of the Revised MOU , VDC would agree that it can not contest SRP water
2 rights and claims in any proceeding, including of course, the Adjudication. In Recitals A. and C. of
3 the Revised MOU, VDC asserts an 1868 priority date of appropriation for the Verde Ditch and SRP
4 asserts an 1869 priority date of appropriation, meaning the Verde Ditch shareholders are senior
5 water rights holders to SRP's downstream rights. However, the waiver in ¶ 12.3 is not restricted by
6 time in any way. Therefore, SRP could later amend its Statement of Claimant in the Adjudication,
7 and possibly assert an earlier priority date to water from the Verde River System than the priority
8 date available for the Verde Ditch and the VDC be unable to contest SRP's claims pursuant to ¶
9 12.3. It is doubtful this was the intent of VDC and SRP but additional language is suggested to
10 address this concern in the Revised MOU, **Exhibit A**.

11 **OBJECTION # 24: MOU, Page 12, ¶ 12.4**

12 **The Court Must Have Final Authority to Determine Which Lands Are Entitled to Water**
13 **Service from the Verde Ditch**

14 *12.4. The Final Settlement Agreement shall provide that*
15 *VDC will not undertake any actions to permit or allow water*
16 *from the Verde Ditch to serve any lands that do not have*
17 *Historic Water Use as approved by the Hance v. Arnold Court,*
18 *either pursuant to the Court's approval of this MOU or in a*
19 *separate order. The lack of an HWU Agreement for any*
particular parcel of land shall not preclude VDC from serving
such parcel, so long as the parcel is designated as having
Historic Water Use by the Hance v. Arnold Court. [emphasis
added].

20 The inference in ¶ 12.4 is that, by virtue of the Court's approval of the MOU (even without
21 the Court's final determination as to Historic Water Use for any parcel), the VDC would be
22 required to discontinue water service to any lands not considered by the Parties under the MOU to
23 be entitled to water service from the Ditch. In all instances, any discontinuation of service from the
24 Ditch for the shareholders which implicates the shareholders property rights in water should
25 originate from the Court's own determinations and orders and not from an agreement between the
26

1 VDC and single shareholder, here SRP. *See* Redline MOU, ¶ 12.4, **Exhibit A**, and YAN Proposed
2 Order, **Exhibit B** for language to address this concern.

3 **OBJECTION # 25: MOU, Page 12, ¶ 12.6**

4 **The Court Must Preserve Its Authority to Review and Approve Any Reconciliation of Ditch
Shares**

5 *12.6. After execution of the Final Settlement Agreement and*
6 *until the termination of this MOU, the Parties will continue to*
7 *cooperate in good faith, with each other and with water users*
8 *on the Verde Ditch, to (a) negotiate and execute HWU*
9 *Agreements for any remaining Green Lands; (b) resolve any*
10 *issues relating to any remaining Orange or Purple Lands; and*
11 *(c) to reconcile any remaining discrepancies regarding Verde*
12 *Ditch shares for those lands under Hance v. Arnold.*

13 It is the Nation's position that the reconciliation of Verde Ditch shares is wholly within the
14 jurisdiction and responsibilities of the *Hance v. Arnold* Court. The VDC and the shareholders in the
15 Verde Ditch are entitled to notice and an opportunity to comment and object with regard to the
16 Court's reconciliation process. Indeed, the reconciliation of shares will impact the operations of the
17 Ditch and could result in an increase in shareholder expenses if the reconciliation were to reduce the
18 pool of shareholders available to carry the costs of Ditch operations. The Nation submits it is this
19 Court, not SRP or VDC, that must ultimately resolve the many outstanding questions needed to
20 perform the reconciliation process. For example, how will shares be reconciled for Orange Lands
21 that did not secure a severance and transfer of their water rights as part of this process and will
22 these lands no longer be entitled to their shares in the Ditch? Do those shares now disappear,
23 making the available pool of resources to operate the Ditch smaller? These are but a few examples
24 of the types of questions that may arise for the Court when the time comes to perform the
25 reconciliation. To this end, the Court should preserve its ultimate authority over the reconciliation
26 of Verde Ditch shares. *See* Redline MOU, ¶ 12.6, **Exhibit A**; YAN Proposed Order, **Exhibit B**.

1 **OBJECTION # 26: MOU, Page 14, ¶ 20**

2 **Any Amendments to the MOU Should Be Approved by the Court to Protect Shareholder**
3 **Interests**

4 20. *Amendments.* Any amendment, modification, or
5 termination of this MOU shall be effected only by an instrument
6 executed and acknowledged by each of the Parties or their
7 successors in interest.

8 Any amendment to the MOU should require Court approval in order to protect the Court's
9 continuing jurisdiction over the *Hance v. Arnold* Decree. Notice of any proposed amendment and
10 an opportunity for the shareholders to be heard on the amendment should also be required. See
11 Redline MOU, ¶ 20, Exhibit A.

12 **OBJECTION # 27:**

13 **Shareholders Were Not Asked to Vote on MOU Approval**

14 When the Verde Ditch was first constructed, it operated as an unincorporated association of
15 water users. Several years later, when a dispute arose between the water users, the *Hance v. Arnold*
16 Court assumed jurisdiction over the operations of the Ditch to ensure that all water users received
17 their water delivered from the Ditch. The Court later established operations and procedures for the
18 Ditch, and today, the Ditch is operated and maintained on behalf of the shareholders by a board of
19 five Commissioners who are officers of the Court. With the *Hance v. Arnold* Court assuming
20 jurisdiction over the operation of the Ditch, an inherent tension was created between what the
21 shareholders may want to do collectively (as an unincorporated association) and what the VDC
22 Commissioners believe (as officers of the Court) may be appropriate to administer the Ditch.

23 This tension is particularly evident in the current proceeding, where the Court must decide
24 whether or not it is going to approve an MOU between the Ditch Commissioners and a single
25 shareholder (SRP), when SRP's primary interest in this proceeding is not related to its own Ditch
26 rights, but rather, to its downstream water rights which are adverse to the remaining shareholders on

1 the Ditch. This presents the question of whether the Court should instead defer to a shareholder
2 vote under the existing Rules and Regulations for the Operation of the Verde Ditch, which provides
3 a voting mechanism for the shareholders to vote on Ditch matters. See Order Promulgating New
4 Rules and Regulations for the Operation of the Verde Ditch filed August 9, 1989, Page 5, ¶ 11 (“At
5 the annual meeting, ditch matters may be referred to the shareholders for decision.”).

6 With this in mind, the following question must be asked: If the shareholders have not
7 affirmatively made the decision to enter into an MOU with SRP (which so far, they have not), and
8 they have not made the decision to agree that the VDC would, for instance, no longer contest the
9 water rights and claims of SRP on their behalf in the Adjudication, does this mean that, by virtue of
10 the Court approving the MOU, it is the Court that is entering into an agreement with SRP, since the
11 Commissioners, who are also officers of the Court, have not received this authority from the
12 shareholders to make such an agreement?

13
14 It is no secret that the MOU involves at least one attribute of the “bundle of sticks” that
15 comprise the water rights held by each of the shareholders. That is, the concept of determining
16 “Historic Water Use” is the same as determining “appurtenancy” and ongoing “beneficial use”,
17 both primary attributes of a water right under Arizona law (meaning that the water diverted is being
18 applied for use on a specific parcel of land).⁷ Since water rights are property rights, the Court must
19 carefully consider any proposal that would place the shareholders’ property rights at risk or allow
20 an outside interest to create a process to leverage their own objectives, unless of course, the
21 shareholders themselves were to first vote in favor of the MOU.

22
23
24 ⁷ In fact, at the July 9, 2015 informational meeting put on by the VDC and SRP for the
25 shareholders, SRP admitted that the MOU does involve a determination of this attribute of the
26 shareholders’ water rights.

1 Based on the foregoing, it is the Nation's position that the approval of an MOU with SRP
2 should make absolutely clear that the shareholders are not required to participate in the MOU
3 process, but that the shareholders' only legal requirement is to follow the Orders of the *Hance v.*
4 *Arnold* Court related to the Court's own objective of clarifying the lands entitled to water service
5 from the Verde Ditch. See YAN Proposed Order, **Exhibit B** for potential language.

6 **OBJECTION # 28:**

7 **Concern Regarding Presumptions and Burdens for Shareholders in Evidentiary Hearings on
8 Historic Water Use (*i.e.* Appurtenancy)**

9 The Nation objects to any aspect of the MOU process that wrongfully shifts the burden of
10 proof in this proceeding to shareholders. The preparation of the MOU's Working Understandings
11 and Exhibit 1 Map, however, appear to do just that since they appear to establish a presumption
12 about shareholders' lands that shareholders will have to overcome if the color designation for
13 Historic Water Use is to be successfully contested before the *Hance v. Arnold* Court. Since Historic
14 Water Use (*i.e.* appurtenancy and continuing beneficial use) is an attribute of a water right, the
15 Court's orders should clearly delineate who has the burden of proof related to that attribute of the
16 right during the evidentiary hearings on Historic Water Use that would be initiated by the Court
17 during the MOU process. Indeed, the application of presumptive standards for the considering of
18 water rights attributes were previously struck down as unconstitutional by the Arizona Supreme
19 Court in *San Carlos Apache Tribe v. Superior Court*, 972 P.2d 179 (1999). Specifically, the
20 Arizona Supreme Court struck down provisions of A.R.S. § 45-256(D) that required a presumption
21 of validity for information contained in ADWR's technical reports describing certain water rights,
22 observing that it is wholly within the **Court's purview** to determine the weight of the evidence
23 presented related to the attributes of water rights to be adjudicated. *Id.* 972 P.2d at 198 ("The HSR
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1 may be admitted in evidence under the conditions stated in § 45-256(C) through (G) and given
2 whatever weight, if any, the court deems appropriate.”).

3 Here, if the Court is to give any weight to the MOU’s Working Understandings and Exhibit
4 1 Map, the Court should require that the VDC provide a detailed report to the shareholders setting
5 forth the specifics of what information was reviewed to prepare the Working Understandings and
6 Map, and for each parcel addressed at an evidentiary hearing, the VDC should be required to fully
7 disclose how it determined Historic Water Use for that parcel. To this day, the VDC and SRP have
8 not clearly explained to the Court or the shareholders specifically what information VDC has
9 reviewed to date in preparing the Working Understandings and Map, and from the informational
10 meeting held on July 9, 2015, it appears that new information is being reviewed every day.⁸ Thus,
11 shareholders have no way of knowing what evidence they might need to present to the Court
12 regarding their lands since they have little way of knowing what information has been reviewed by
13 the VDC, even in the most general sense. Before the Court addresses Historic Water Use for any
14 shareholder lands, the VDC should be required to provide this information in the form of a report to
15 all VDC shareholders, which should, at the minimum, describe the process employed, the
16 assumptions made, and the general categories of data reviewed by VDC as part of this important
17 process *See* YAN Proposed Order, **Exhibit B**, for suggestions related to this report.
18
19
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23 ⁸ The MOU offers little by way of explanation as to how VDC and SRP assigned certain colors
24 to certain lands. For instance, the MOU does not define how the VDC and SRP determined
25 whether or not a parcel of land has “currently” been using water, or what that even means. Does
26 “currently” mean when the VDC and SRP looked at a parcel of land on a specific date, or does it
mean that the VDC and SRP have reviewed 5 years of aerial photos, 10 years of photos or
something else entirely?

OBJECTION # 29:

Questions Regarding Ditch Lands Converted to Roads and Other Uses

Shareholders are entitled to know how, in addressing the issues of Historic Water Use, previously irrigated lands under the Ditch that have since been converted to roads or other uses have been treated in the Working Understandings and Map. Does the MOU Exhibit 1 Map show these lands as Purple or Orange or not at all? If the roads and other previously irrigated lands were designated as Purple, it would seem that those areas might be a source to potentially address Orange Lands. If VDC and SRP did not include these lands on the Map, just like SRP's purported Ditch rights were not included on the original MOU Exhibit 1 Map, are there other categories of Ditch rights and uses that are missing from the Map?

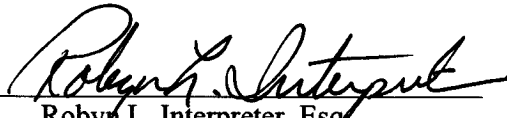
In short, if the Court is to administer the full breadth of the *Hance v. Arnold* Decree, any potentially missing categories of lands must also be addressed. See YAN Proposed Order, **Exhibit B**, for suggestions related to including all lands under the Ditch.

CONCLUSION

While the Nation appreciates the significant efforts of the Court in considering the MOU, and the VDC and SRP in attempting to find solutions to issues among them, in the end, there is a "right way" and a "wrong way" to address the foundational concerns that many of the shareholders have regarding the efforts of SRP to challenge the shareholders' Verde Ditch rights. The *Hance v. Arnold* Court has the opportunity and indeed, the responsibility under its own continuing jurisdiction, to clarify the rights of the shareholders in a process that would involve all shareholders and all Ditch rights and that would ultimately be incorporated into the Gila River Adjudication. Such a clarification would go a long way to settling the rights of the shareholder under *Hance v. Arnold* and potentially allow for a streamlined incorporation of the Court's determinations one day into the Gila River Adjudication.

1 RESPECTFULLY SUBMITTED this 17th day of July, 2015.

2 MONTGOMERY & INTERPRETER, PLC

3
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10 ORIGINAL of the foregoing filed this
11 17th day of July, 2015, with:

12 Clerk of the Court
13 Yavapai County Superior Court
14 2840 Commonwealth Dr.
15 Camp Verde, Arizona 86322

16 COPY of the foregoing mailed this
17 17th day July, 2015, to:

18 The Honorable David L. Mackey
19 Judge of the Yavapai County Superior Court, Div. I
20 120 South Cortez Street
21 Prescott, Arizona 86303

22 COPIES sent via U.S. Mail and e-mail this
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MEMORANDUM OF UNDERSTANDING

YAN REVISED 7/17/15

This Memorandum of Understanding is entered into this _____ day of _____, 2015, by and among the Verde Ditch Company, the Salt River Project Agricultural Improvement and Power District, and the Salt River Valley Water Users' Association. Capitalized terms used herein are defined in Section 4 below.

RECITALS

A. VDC, on behalf of the water users receiving water from the Verde Ditch, claims certain rights to divert and use the waters of the Verde River, with claimed priority dates as early as 1868. VDC has filed Statement of Claimant No. 39-50029 in the Adjudication to document and protect these claimed rights and other claimed rights. Individuals and other organizations have filed individual Statements of Claimant wherein they claim the right to receive water from the Verde River delivered through the Verde Ditch with claimed priority dates as early as 1868.

B. VDC is an unincorporated association that operates through five Commissioners appointed by and acting pursuant to the authority of the *Hance v. Arnold* Court, Yavapai County Case No. 4772. The Verde Ditch Commissioners executing this MOU on behalf of VDC do so with the express prior approval and authority of the *Hance v. Arnold* Court, which has continuing jurisdiction and remains the Master of the Verde Ditch.

C. SRP and the shareholders of the Association claim certain rights to divert and use the waters of the Verde River, with claimed priority dates as early as 1869. SRP has filed Statements of Claimant Nos. 39-50053 (as amended), 39-50054 (as amended), and 39-50055 (as amended) in the Adjudication to document and protect these claimed rights and other claimed rights.

D. In addition to SRP's interests as a holder of downstream water right claims in the Phoenix area, the District is the holder of shares in VDC.

E. In an effort to avoid the time and cost of extensive litigation regarding entitlement to Verde River water and to reduce the frustration, expense, and uncertainty for Verde Ditch shareholders and SRP, the Parties have met in an attempt to come to a comprehensive agreement on the delineation of the lands served by the Verde Ditch that have Historic Water Use.

F. The execution and implementation of this MOU is believed to be appropriate to provide long-term certainty for landowners served by the Verde Ditch, to assist the Verde Ditch in long term planning and implementation of improvements for increased efficiency

Deleted: also owns approximately 114.48 acres under the Verde Ditch (Assessor's Parcel No. 403-23-017M) and

Deleted: 23.57

and management of water delivery and to promote and assist in continued economic stability as a result of such certainty for the lands that the Parties agree are legally entitled to receive water from the Verde Ditch.

G. The Parties intend for this MOU to set forth a process whereby they can work together, along with the water users on the Verde Ditch, to agree, as among the Parties, upon the existence of Historic Water Use for specific parcels served by the Verde Ditch; to attempt to resolve issues with respect to lands served by the Verde Ditch that do not have Historic Water Use or have disputes regarding the existence of Historic Water Use; and to provide a process to ensure that only lands that have Historic Water Use receive and use water from the Verde Ditch.

H. This MOU is not intended to address or resolve any attributes of any water rights other than that Historic Water Use exists for particular parcels of land. Issues such as priority date, quantity, purpose of use, and season of use are specifically left for resolution in some other forum or agreement; provided, however, that this MOU does not limit the *Hance v. Arnold* Court's authority, to the extent such authority otherwise exists, to address those issues as part of its review and confirmation of Historical Water Uses for parcels of land entitled to receive water from the Verde Ditch pursuant to the determinations of the *Hance v. Arnold* Court. Nothing in this MOU is intended to provide a guarantee to any VDC shareholder or water user that its right to use water delivered from the Verde River through the Verde Ditch may not be challenged by parties other than VDC or SRP, in the Adjudication or otherwise.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals and Exhibits.** The recitals set forth above and all attached exhibits are hereby expressly incorporated and included as part of this MOU.
2. **Effectiveness.** This MOU shall become effective upon the Execution Date.
3. **Term and Termination.** This MOU shall continue in force for a period of five (5) years from the Execution Date and shall thereafter be automatically renewed for additional periods of two (2) years, unless and until terminated as follows:

3.1. This MOU may be terminated at any time upon mutual written consent of the Parties.

3.2. This MOU may be terminated by any Party, upon thirty (30) days' written notice to the other Party, if any of the Completion Targets are not met, as long as such failure to meet the Completion Targets is not the result of an intentional act by the terminating Party.

3.3. This MOU may be terminated by either Party if the other Party is in breach of a material provision of this MOU and such breach remains uncured for a period of sixty (60) days after written notice delivered by the non-breaching Party pursuant to Section 19. SRP shall be considered to be one Party for purposes of this Subsection 3.3.

3.4. For good cause shown, this MOU may be terminated by either Party by filing an appropriate pleading with the *Hance v. Arnold* Court and entry of an appropriate order reciting the good cause shown as the basis for terminating this MOU.

4. Definitions.

4.1. "Adjudication" shall mean *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Maricopa County Superior Court Cause Nos. W-1 through W-4 consolidated.

4.2. "ADWR" shall mean the Arizona Department of Water Resources, an agency of the State of Arizona.

4.3. "Association" shall mean the Salt River Valley Water Users' Association, an Arizona territorial corporation.

4.4. "Completion Targets" shall mean those cumulative completion goals set forth in Section 11.

4.5. "District" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, established pursuant to Title 48, Chapter 17 of the Arizona Revised Statutes.

4.6. "Execution Date" shall mean the date upon which this MOU is fully executed by the Parties and approved by the *Hance v. Arnold* Court.

4.7. "Final Settlement Agreement" shall mean, as set forth in Section 12, that written settlement agreement regarding Historic Water Use for lands served by the Verde Ditch expected to be executed by the Parties and submitted to the *Hance v. Arnold* Court for review and approval.

4.8. "Green Lands" shall mean those lands described in Subsection 5.3.02 and depicted on Exhibit 1.

4.9. “*Hance v. Arnold*” shall mean that case in the Yavapai County Superior Court captioned as “*George W. Hance, et al. v. Wales Arnold, et al.*” (Case No. 4772).

4.10. “*Hance v. Arnold* Court” shall mean the Yavapai County Superior Court, and any appellate court or successor court (including federal courts) with continuing jurisdiction over *Hance v. Arnold*.

4.11. “Historic Water Use” or “HWU” shall mean use of the waters of the Verde River System through the Verde Ditch that was (a) commenced on a particular parcel prior to June 12, 1919, (b) commenced after June 12, 1919 pursuant to a certificate of water right issued by ADWR or other state agency of similar jurisdiction prior to January 1, 2014 or (c) pursuant to a valid severance and transfer of a water right approved under applicable law.

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4.12. “Historic Water Use Agreement” or “HWU Agreement” shall mean an agreement executed pursuant to Section 7.

4.13. “MOU” or “this MOU” shall mean this Memorandum of Understanding, including all exhibits hereto.

4.14. “Orange Lands” shall mean those lands described in Subsection 5.3.04 and depicted on Exhibit 1.

4.15. “Party” or “Parties” shall mean SRP and VDC.

4.16. “Proceeding” shall include any judicial, administrative, or legislative proceeding.

4.17. “Purple Lands” shall mean those lands described in Subsection 5.3.03 and depicted on Exhibit 1.

4.18. “Receiving Property” shall mean the property to which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.19. “Severance and Transfer Agreement” shall mean an agreement to sever and transfer pursuant to Section 8 or 9.

4.20. “SRP” or “Salt River Project” shall collectively mean the District and the Association.

4.21. “SRP Rights” shall mean any rights or claims to rights to use water on land included within the Salt River Reservoir District, a map of which is set forth in Exhibit 2,

regardless of whether such rights are claimed or held by the District, the Association, or Association shareholders.

4.22. "Transferee" shall mean a person or entity owning the property to which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.23. "Transferor" shall mean a person or entity owning the property from which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.24. "Transferring Property" shall mean the property from which a severance and transfer is made pursuant to a Severance and Transfer Agreement.

4.25. "VDC" shall mean the Verde Ditch Company, an unincorporated association that operates and maintains the Verde Ditch pursuant to the March 23, 1909 order issued in *Hance v. Arnold*, as subsequently modified or amended.

4.26. "Verde Ditch" shall mean the ditch and associated water delivery system from the Verde River located near Camp Verde, Arizona, and operated and maintained by VDC pursuant to orders issued by the *Hance v. Arnold* Court.

4.27. "Verde Ditch HWU Lands" shall mean those lands that are described in Subsection 5.3.01 and depicted on Exhibit 1 and as may be modified hereafter by agreement of the Parties and confirmed or approved by the *Hance v. Arnold* Court.

4.28. "Working Understanding" shall mean one or more of a series of preliminary and common understandings reached by the Parties with regard to the existence of Historic Water Use for particular parcels of land served by the Verde Ditch, as documented by this MOU or as may be subsequently modified as provided herein.

5. Working Understanding on Verde Ditch HWU Lands, Green Lands, Purple Lands, and Orange Lands.

5.1. As part of the negotiation of this MOU, the Parties have reviewed and shared their records regarding (a) which lands are currently receiving and using water from the Verde Ditch, (b) which lands served by the Verde Ditch have Historic Water Use, (c) which lands are owned by individuals or entities who possess shares to the Verde Ditch based upon *Hance v. Arnold*, and (d) which lands the Parties believe are entitled and not entitled to receive water based upon the historical records of VDC and SRP.

5.2. Upon comparison of their respective records, the Parties have come to Working Understandings regarding various issues with respect to the lands served by the Verde Ditch and their respective Historic Water Use. For purposes of this MOU, those

Working Understandings are preliminary and are not binding on the Parties or on any other individual or entity. The Working Understandings are compilations of multiple records and sources to further the process of ultimately ensuring that only lands that have Historic Water Use receive and use water from the Verde Ditch.

5.3. The Parties have come to a Working Understanding that:

.01. Approximately 1,067.7* acres served by the Verde Ditch have Historic Water Use. Those lands are referred to herein as Verde Ditch HWU Lands and are generally depicted on Exhibit 1.

.02. Approximately 914.3* acres of Verde Ditch HWU Lands are currently receiving and using water from the Verde Ditch. Those lands are referred to herein as "Green Lands" and are shown in green on Exhibit 1.

.03. Approximately 155.7* acres of Verde Ditch HWU Lands are not currently receiving or using water from the Verde Ditch. Those lands are referred to herein as "Purple Lands" and are shown in purple on Exhibit 1.

.04. Approximately 153.8* acres are currently receiving or using water from the Verde Ditch but which appear to lack records that support Historic Water Use. Those lands are referred to herein as "Orange Lands" and are shown in orange on Exhibit 1.

5.4. **Final Determination of Working Understandings.**

.01. The Parties recognize and acknowledge that individual water users on the Verde Ditch or others might have information that would conflict with or supplement the information upon which the Parties have utilized in the review and compilation of Verde Ditch HWU Lands, Green Lands, Purple Lands, and Orange Lands.

.02. The Parties agree to review any additional information provided by shareholders or others in good faith and, upon a common determination by the Parties that one or more aspects of a Working Understanding were incorrect or incomplete, to modify this MOU to reflect a revised Working Understanding.

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* The number of acres, as to any category or designation, remains preliminary and subject to further changes as additional information is obtained and reviewed.

.03. The Parties will provide formal written notice to the *Hance v. Arnold* Court of reaching a Final Working Understanding, and to proceed accordingly as set forth in this MOU and the Orders of the Court.

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.02 Upon the filing of the Final Working Understandings with the Court, any user of water from the Verde Ditch may present information or supplemental alternatives or evidence to the *Hance v. Arnold* Court for consideration regarding Historic Water Use. The Court will establish an evidentiary hearing schedule for that purpose after the Parties have submitted a Final Working Understandings document and Map to the Court and prior to the Court's consideration of approval of the Final Settlement Agreement between the Parties.

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.03. In the event the Parties are unable to reach a common determination as to Historic Water Use for any particular lands, the information compiled for those lands shall be submitted to the *Hance v. Arnold* Court for consideration at the same time as the Final Working Understandings document and Map are submitted to the Court by the Parties. Evidence will be taken regarding those lands at the same time the Court hears evidence from other individual Verde Ditch water users.

.04. In the event of a dispute, including disputes between SRP and VDC, or any other shareholder as to the designation of Historic Water User for lands, the *Hance v. Arnold* Court will make the final determination as to the status of the lands that are entitled or not entitled to water service from the Verde Ditch and the Parties agree to adopt the findings of the Court with regard to such lands as part of the Final Settlement Agreement.

5.5. In accordance with the requirements of the Court Order approving the MOU, in conjunction with the compilation and review of additional information in Subsection 5.4, the Parties agree to provide information obtained through the process to any VDC shareholder or landowner upon request, unless such information is exempt from disclosure by attorney-client privilege or other applicable privilege.

6. Interim Actions During Pendency of this MOU.

6.1. During the time between the Execution Date of this MOU and the date when the Final Settlement Agreement entered into pursuant to Section 12 becomes effective, provided that no termination of this MOU has otherwise occurred, SRP agrees to not contest, in any Proceeding, the existence of Historic Water Use for (a) Green Lands, (b) Purple Lands or (c) Orange Lands, except that SRP will be permitted to contest Historic Water Use in the proceedings before the *Hance v. Arnold* Court where evidence is taken regarding Historic Water Use, as contemplated in Section 5.4.04 herein,

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6.2. During the time between the Execution Date of this MOU and the date when the Final Settlement Agreement entered into pursuant to Section 12 becomes effective, VDC agrees to not contest the existence of the SRP Rights in any Proceeding.

6.3. Subsections 6.1 and 6.2 shall not survive the termination of this MOU pursuant to Section 3 at any time prior to the date when the Final Settlement Agreement becomes effective.

7. Agreement upon the Existence of Historic Water Use for Green Lands.

7.1. Upon and after the Execution Date, the Parties agree to work cooperatively and to meet with individual water users on the Verde Ditch who own Green Lands, in order to achieve agreement upon the existence of Historic Water Use for those Green Lands.

7.2. Upon achieving agreement with an owner of Green Lands, the Parties and the landowner will execute an HWU Agreement. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Green Lands at issue in that agreement in any Proceeding. Also in the HWU Agreement, the owner of the Green Lands shall agree, in writing, (a) to not claim Historic Water Use relating to water delivered through the Verde Ditch for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU and as governed by the *Hance v. Arnold* Court; and (c) to not expand water use from the Verde Ditch on the parcel except in conjunction with a severance and transfer as set forth in this MOU and as governed by the *Hance v. Arnold* Court.

7.3. Upon execution by all necessary parties of an HWU Agreement for a particular parcel of Green Lands, the HWU Agreement shall be recorded in the real property records of the Yavapai County Recorder.

8. Facilitating Severance and Transfers from Purple or Green Lands to Orange Lands.

8.1. The Parties agree to work cooperatively, with each other and with other water users on the Verde Ditch, to facilitate severance and transfers so that lands receiving water from the Verde Ditch are amended appropriately and have a recognized right that is protectable under state law. The Parties will seek to encourage voluntary transactions between the owners of Purple or Green Lands and the owners of Orange Lands to accomplish this purpose.

8.2. The Parties anticipate that, upon agreement between two willing participants regarding a severance and transfer, the participants will execute a Severance and Transfer Agreement in accordance with the provisions of this MOU. However, nothing in this MOU shall prevent two willing participants from independently seeking and obtaining a severance and transfer beyond the scope of this MOU in accordance with applicable law,

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8.3. Any severance and transfer pursuant to Section 8 shall be subject to the prior approval of the *Hance v. Arnold* Court. For severances and transfers wholly between the lands originally encompassed by the *Hance v. Arnold* Decree, SRP agrees to not exercise any alleged veto power over such severance and transfer pursuant to A.R.S. § 45-172(A)(5), but SRP reserves the right to contest any such proposed severances and transfers in proceedings before the *Hance v. Arnold* Court during the Court's consideration of whether or not to approve a proposed severance and transfer. For severances and transfers involving lands outside of the lands originally encompassed by the *Hance v. Arnold* Decree, the written consent of SRP for such severance and transfer shall be required in addition to approval by the *Hance v. Arnold* Court. The request for SRP's consent, where required, will be submitted to the District Board of Directors and the Association Board of Governors concurrently with a Severance and Transfer Agreement executed by the landowners involved and any other forms required by SRP for such purposes.

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8.4. Any severance and transfer pursuant to this Section 8 shall be subject to review and approval by the *Hance v. Arnold* Court, after providing notice and an opportunity to be heard as deemed appropriate by the *Hance v. Arnold* Court. As a matter of accommodation and convenience, on or before February 15 of each year, the Parties will coordinate the filing of a combined severance and transfer application with the *Hance v. Arnold* Court to seek approval of severance and transfers that have been agreed to between owners of the lands affected for the prior calendar year. This provision shall not preclude the Parties or individual landowners from individually filing severance and transfer applications with the *Hance v. Arnold* Court during the course of the calendar year, but the Parties will work cooperatively to submit one combined annual filing, to the extent possible, on or before February 15 of each year if severance and transfers exist for which applications have not otherwise been submitted to the *Hance v. Arnold* Court prior to that date.

8.5. Promptly upon execution a Severance and Transfer Agreement for a particular transfer from Purple or Green Lands to Orange Lands, consent to such severance and transfer by SRP, and approval of the severance and transfer by the *Hance v. Arnold* Court, the records of VDC will be amended to reflect such changes and the Transferor shall cause the Severance and Transfer Agreement to be recorded in the real property records of the Yavapai County Recorder. The VDC will also promptly file an amendment or amendments to the VDC's Statement of Claimant in the Adjudication to ensure that a proper record of the severances and transfers are available to ADWR as the technical advisor to the Adjudication Court. The Transferee may also proceed with any necessary filings with ADWR for

severance and transfer, but nothing in this MOU requires any filing with ADWR if it is not otherwise required under applicable law.

8.6. Upon approval by the *Hance v. Arnold* Court of any severance and transfer application pursuant to this Section 8, the Parties will work cooperatively with the Transferee to negotiate and execute a HWU Agreement for the Receiving Property, which shall be recorded with the Yavapai County Recorder's office. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Receiving Property in any Proceeding. Also in the HWU Agreement, the Transferee shall agree, in writing, (a) to not claim Historic Water Use relating to water delivered through the Verde Ditch for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU; and (c) to not expand water use from the Verde Ditch on the parcel except in conjunction with a severance and transfer as set forth in this MOU.

8.7. Nothing contained herein shall preclude or prohibit an individual landowner from pursuing all rights and remedies to obtain a severance and transfer independent of the process set forth herein under state law. However, neither Party is obliged to approve a severance and transfer but shall use good-faith efforts in consideration of any such transfer. In the event either Party receives an application for a severance and transfer affecting an Historic Water Use served by the Verde Ditch, the Party receiving the application will provide notice to the other.

9. Securing Additional Water Rights for Orange Lands If Purple or Green Lands Are Not Sufficient.

9.1. The Parties acknowledge that the number of acres of Historic Water Use voluntarily severed and transferred from the Purple or Green Lands might or might not be sufficient to provide Historic Water Use for all acres of Orange Lands.

9.2. If the Parties determine that no additional acres of Historic Water Use are reasonably available for voluntary severance and transfer from Purple or Green Lands to satisfy the remaining needs for such Historic Water Use on Orange Lands, the Parties agree to work cooperatively to attempt to locate additional sources of water rights, as evidenced by Historic Water Use, for the remaining Orange Lands; provided, however, that nothing in this Section 9 shall require any Party to provide financial assistance for the purchase, lease, or other acquisition of water rights.

9.3. Any severance and transfer pursuant to this Section 9 shall be subject to the consent of SRP. The request for SRP's consent will be submitted to the District Board of

Directors and the Association Board of Governors concurrently with the Severance and Transfer Agreement executed by the landowners involved and any other forms required by SRP for such purposes.

9.4. Any severance and transfer pursuant to this Section 9 shall be subject to review and approval by the *Hance v. Arnold* Court, after providing notice as deemed appropriate by the *Hance v. Arnold* Court to landowners on the Verde Ditch and to any other parties the Court deems necessary. Such severance and transfers to Orange Lands may be included in the annual submittal for approval by the *Hance v. Arnold* Court pursuant to Subsection 8.4 hereof.

9.5. Promptly upon execution of a Severance and Transfer Agreement for a particular transfer from other lands to Orange Lands and consent to such severance and transfer by SRP and approval of the severance and transfer by the *Hance v. Arnold* Court, the records of VDC will be amended to reflect such changes, the Transferor shall cause the Severance and Transfer Agreement to be recorded in the real property records of the Yavapai County Recorder. The Transferee may proceed with any necessary filings with ADWR, but nothing in this MOU requires any filing with ADWR if it is not otherwise required under applicable law.

9.6. Upon approval by the *Hance v. Arnold* Court of any severance and transfer application pursuant to this Section 9, the Parties will work cooperatively with the Transferee to negotiate and execute an HWU Agreement for the Receiving Property, which shall be recorded in the Yavapai County Recorder's Office. In the HWU Agreement, SRP shall agree, in writing, to not contest the existence of Historic Water Use for the Receiving Property in any Proceeding. Also in the HWU Agreement, the Transferee shall agree, in writing, (a) to not claim Historic Water Use relating to water delivered through the Verde Ditch for any other lands on the parcel in question (as the scope of that parcel is defined in the HWU Agreement) as against SRP in any Proceeding; (b) to not sell, transfer, or otherwise convey any VDC shares to another parcel unless such conveyance is made in conjunction with a severance and transfer performed pursuant to the procedures set forth in this MOU; and (c) to not expand water use from the Verde Ditch on the parcel except in conjunction with a severance and transfer as set forth in this MOU.

9.7 VDC will consider any Severance and Transfer application submitted pursuant to this Section 9, but such approval is conditioned upon the consideration of all factors and impacts to the Verde Ditch and conditional upon approval of the *Hance v. Arnold* Court.

10. Reconciliation of Verde Ditch Shares. Upon approval by the *Hance v. Arnold* Court of a severance and transfer application, VDC shall, subject to the Court's approval, reconcile the respective shares in the Verde Ditch with the associated Historic Water Use existing after approval of the severance and transfer applications. Nothing contained herein

shall modify or amend any assessment or charge by VDC retroactively or modify the existing Rules and Regulations of VDC as to continuation of assessments.

11. Reasonable Progress Toward Completion.

11.1. The Parties agree that, although obtaining the severance and transfer of sufficient Historic Water Use to all Orange Lands and agreement upon the existence of Historic Water Use for Green Lands could be time-consuming and difficult tasks, they will make diligent efforts toward completing these tasks in a timely manner.

11.2. The Parties have established cumulative Completion Targets for execution of Severance and Transfer Agreements for the Orange Lands and for execution of HWU Agreements for the Green Lands:

December 31, 2016	30% of all Orange Lands and 40% of all Green Lands
December 31, 2017	50% of all Orange Lands and 60% of all Green Lands
December 31, 2018	70% of all Orange Lands and 80% of all Green Lands
December 31, 2019	80% of all Orange Lands and 90% of all Green Lands

12. Final Settlement Agreement on Verde Ditch Historic Water Use.

12.1. Upon approval by the *Hance v. Arnold* Court of severance and transfer applications to provide Historic Water Use for eighty (80) percent of the Orange Lands and execution and recording of HWU Agreements for eighty (80) percent of the Green Lands, the Parties shall prepare and submit to the *Hance v. Arnold* Court for its approval a written Final Settlement Agreement settling all Historic Water Use for such lands among the Parties. The *Hance v. Arnold* Court's approval of the Final Settlement Agreement will conform the existing judgment in *Hance v. Arnold* pursuant to the Court's continuing jurisdiction to enforce and interpret the judgment but shall not be deemed an adjudication of the water rights for any particular parcel of land that would otherwise be determined in the Adjudication.

12.2 In the Final Settlement Agreement, SRP shall agree, in writing, to not contest, in any Proceeding, the existence of Historic Water Use that has been approved by the *Hance v. Arnold* Court for (a) Green Lands (b) Purple Lands or (c) Orange Lands for which Severance and Transfer Agreements have been executed, approved by the Parties and the *Hance v. Arnold* Court, and recorded.

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12.3. In the Final Settlement Agreement, VDC shall agree, in writing, to not contest the existence of the SRP Rights in any Proceeding. Notwithstanding the foregoing, VDC shall be entitled to contest the existence of amended claims or new claims filed by SRP for water rights which did not otherwise exist on January 1, 2014.

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12.4. The Final Settlement Agreement shall provide that VDC will not undertake any actions to permit or allow water from the Verde Ditch to serve any lands that do not have Historic Water Use as determined by the *Hance v. Arnold* Court by Court Order. The lack of an HWU Agreement for any particular parcel of land shall not preclude VDC from serving such parcel, so long as the parcel is designated as having Historic Water Use by the *Hance v. Arnold* Court.

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12.5. Upon approval by the *Hance v. Arnold* Court of the Final Settlement Agreement, the Parties shall execute such agreement. The Final Settlement Agreement, when approved by the *Hance v. Arnold* Court and executed by the Parties, shall constitute a final and binding agreement among the Parties.

12.6. After execution of the Final Settlement Agreement and until the termination of this MOU, the Parties will continue to cooperate in good faith, with each other and with water users on the Verde Ditch, to (a) negotiate and execute HWU Agreements for any remaining Green Lands; (b) resolve any issues relating to any remaining Orange or Purple Lands; and (c) to reconcile any remaining discrepancies regarding Verde Ditch shares for those lands under *Hance v. Arnold*. All reconciliations of shares in the Verde Ditch shall be submitted to the Court for final approval and notice and an opportunity to comment or object shall be provided to the Verde Ditch shareholders pursuant to the process defined by the *Hance v. Arnold* Court.

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13. Binding Agreement. This MOU is binding upon and inures to the benefit of the Parties, their heirs, executors, successors, and assigns.

14. Waiver. The failure of any Party to insist on any one or more instances upon strict performance of any of the obligations of any other Party pursuant to this MOU or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

15. Controlling Law, Jurisdiction, and Venue. This MOU shall be interpreted and construed according to Arizona law. The Parties agree that jurisdiction and venue in any action to enforce the provisions of this MOU shall be proper in the *Hance v. Arnold* Court, or, if the *Hance v. Arnold* Court is not in existence at such time, in the Superior Court in and for Yavapai County, Arizona.

16. Transactions Costs. Each Party agrees to bear its own attorneys' fees, consultants' fees, and other costs associated with negotiating, drafting, and executing this MOU.

17. Attorneys' Fees and Costs. In any future dispute or action arising under this MOU, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees as may be awarded by the Court.

18. Entire Agreement. This MOU and the exhibits attached and incorporated herein constitute the entire understanding of the Parties and supersede any previous agreement or understandings on the subjects discussed herein.

19. Notice; Change of Name or Address.

19.1. All notices, requests, demands, and other communications under this MOU shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth below:

(a) If to SRP:

Bruce Hallin, Director
Water Rights and Contracts
Salt River Project, MS PAB 110
1521 Project Drive
Tempe, AZ 85281-1298

With copies to:

Frederic L. Beeson, Senior Director
Law Services—Litigation
Salt River Project, MS PAB 341
1521 Project Drive
Tempe, AZ 85281-1298

Corporate Secretary's Office
Salt River Project
1521 Project Drive, MS PAB 215
Tempe, AZ 85281-1298

(b) If to VDC:

Verde Ditch Company
P.O. Box 2345
Camp Verde, AZ 86322

L. Richard Mabery, Esq.
Law Offices of L. Richard Mabery, P.C.
234 North Montezuma Street
Prescott, AZ 86301-3008

19.2. Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee or address in conformity with the provisions of this Section 19 for giving notice.

20. **Amendments.** Any amendment, modification, or termination of this MOU shall be effected only by an instrument executed and acknowledged by each of the Parties or their successors in interest and approved by the *Hance v. Arnold Court*,

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21. **Time of Essence.** Time is of the essence under this MOU. Any extension of time for performance under this MOU by any Party must be in writing.

22. **Severability.** If any provision or any portion of a provision of this MOU is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or of any other provision of this MOU, unless the invalid, illegal, or unenforceable provision defeats the primary and essential purposes of the Parties as expressed herein.

23. **Not Partners.** Neither this MOU, nor any activity of the Parties in connection herewith, shall constitute the Parties as partners or any other entity or association for any purposes whatsoever.

24. **Interpretation.** The Parties acknowledge and agree that each has been given the opportunity to independently review this MOU with legal counsel, and that this MOU is the result of negotiations among the Parties. In the event of any ambiguity in or dispute regarding the interpretation of this MOU, the interpretation shall not be resolved by any rule of interpretation providing for the interpretation against the Party who caused the uncertainty to exist or against the draftsman.

25. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument.

26. **Not Precedent.** The Parties have negotiated this MOU to resolve specific issues relating to the lands served by the Verde Ditch. The terms and conditions of this MOU are not intended to have any value as precedent with respect to other ditch companies in the area or other situations.

27. Individual Rights. Notwithstanding any provision herein, an individual landowner receiving water from the Verde Ditch is the owner of any water right appurtenant to the land. The owner of the land is solely responsible for the use, misuse, and compliance with state law in regards to any water right or authorized uses.

28. No Third-Party Beneficiaries. Notwithstanding any provision or section of this MOU, the terms and provisions contained herein do not constitute or create a third-party beneficiary entitled to enforce or demand that any party perform or undertake any act or filing by the Commissioners of VDC or the Officers/Directors of SRP.

IN WITNESS HEREOF, this MOU is executed by the Parties and made effective on the Execution Date.

VERDE DITCH COMPANY

By _____
Commissioner

Date: _____, 2015

By _____
Commissioner

Date: _____, 2015

By _____
Commissioner

Date: _____, 2015

By _____
Commissioner

Date: _____, 2015

By _____
Commissioner

Date: _____, 2015

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By _____

Its _____

Date: _____, 2015

Attest: _____
Secretary

Date: _____, 2015

Approved as to form:

Date: _____, 2015

SALT RIVER VALLEY WATER USERS'
ASSOCIATION

By _____

Its _____

Date: _____, 2015

Attest: _____
Secretary

Date: _____, 2015

Approved as to form:

Date: _____, 2015

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

GEORGE W. HANCE, et al,
Plaintiffs,

Case No. P1300-CV4772

vs.

WALES ARNOLD, et ux, et al,
Defendants

[PROPOSED] ORDER

In the matter of the VERDE DITCH
COMPANY

I. BACKGROUND

On December 1, 2014, the Verde Ditch Company (VDC) filed a Petition with the Court to consider approval of a Memorandum of Understanding (MOU) between the Verde Ditch Company (VDC) and the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association (collectively, SRP). After several hearings and upon hearing the initial objections and comments filed regarding this matter, the Court provided additional time to the VDC and SRP to consider the concerns of those who objected and commented, and the VDC and SRP thereafter filed a revised MOU with the Court on June 15, 2015. The Court then provided additional time for objections and comments to be filed regarding the amended MOU and for responses thereto. A hearing was held on August 15, 2015 regarding the proposed MOU and after hearing the objections, comments, and responses, the Court enters the following Orders:

1 **II. PURPOSE OF THE MOU AND THE GOALS OF THE *HANCE V. ARNOLD* COURT**

2 The purpose the MOU is to create a framework whereby interested Verde Ditch
3 shareholders may consider entering into settlement agreements, called Historic Water Use (HWU)
4 Agreements and Severance and Transfer Agreements, with SRP, to settle questions between SRP,
5 the VDC and shareholders regarding the right of a shareholder to receive water from the Verde
6 Ditch for a specific parcel of land being provided water service from the Verde Ditch. In exchange
7 for a shareholder entering into an HWU Agreement, SRP has agreed that it will not contest the
8 shareholder's right to receive water from the Verde Ditch for certain specific lands in the Gila River
9 Adjudication in the future, provided that the shareholder will agree that any future changes to the
10 location of the use of the waters served by the Verde Ditch for that land will have to go through a
11 severance and transfer process as prescribed by the MOU and HWU Agreements. Further, upon the
12 approval of a Final Settlement Agreement between SRP and VDC, the VDC will agree to not
13 contest the water rights and claims of SRP and will agree to not provide water service to lands not
14 entitled to water service pursuant to the MOU and the Orders of this Court.
15

16 The Court will not be reviewing or approving the HWU Agreements that a shareholder may
17 enter into with SRP and such agreements are independent contractual agreements between the
18 shareholder and SRP. However, SRP and/or a shareholder may seek to enforce these contractual
19 agreements before this Court where the HWU Agreement governs the conduct of the parties to the
20 agreement as it relates to receiving water service from the Verde Ditch. Notwithstanding the
21 foregoing, nothing contained in an HWU Agreement shall be permitted to force a change or
22 interfere with this Court's ongoing administration of the *Hance v. Arnold* Decree.
23

24 In addition to the settlement process offered by the MOU, this Court finds it important for
25 the ongoing administration of the *Hance v. Arnold* Decree, to clarify which lands are entitled to
26 receive water service from the Verde Ditch. As part of meeting the Court's goal, the work that has

1 been conducted thus far to research Historic Water Use (as that term is defined in the MOU) on the
2 various lands being served by the Ditch may provide helpful information to the Court in working
3 towards clarifying the status of lands entitled to water service from the Ditch. However, the Court
4 is also aware that shareholders may have additional information and evidence regarding their lands
5 and the Court intends to provide due process to the shareholders through an opportunity to present
6 that information and evidence to the Court in a timely fashion.

7 The Court contemplates that the settlement process established by the MOU will move
8 along a parallel track with the Court in its work to make the necessary determinations that will
9 clarify which lands are entitled to water service under the Ditch in accordance with the *Hance v.*
10 *Arnold Decree*.

11 The settlement process offered by the MOU is entirely voluntary and Verde Ditch
12 shareholders are not required to enter into any agreements with SRP if they do not choose to do so.
13 However, shareholders should be aware that the Court's own process to make determinations as to
14 the rights of any shareholder to receive water from the Verde Ditch has the potential to impact each
15 individual shareholder's right to receive water from the Verde Ditch as well as the management of
16 the Ditch as a whole. As such, the Court has outlined the process it will use to address these rights
17 in this Order and the Court will ensure that all shareholders in the Verde Ditch are provided due
18 process and an opportunity to be heard before the Court makes its final determinations regarding
19 the rights to receive water from the Verde Ditch for any particular parcel of land.
20

21 **III. JURISDICTION OF THE *HANCE V. ARNOLD* COURT TO DETERMINE**
22 **HISTORIC WATER USE TO ADMINISTER THE *HANCE V. ARNOLD* DECREE**

23 TO BE INSERTED HERE:

24 COURT'S DECISION RELATED TO ITS JURISDICTION TO DETERMINE HISTORIC

25 WATER USE AS AN ATTRIBUTE OF A WATER RIGHT
26

1 **IV. INAPPLICABILITY OF A.R.S. § 45-172 AS A REQUIREMENT FOR**
2 **SEVERANCES AND TRANSFERS FOR LANDS ALREADY UNDER THE**
3 **JURISDICTION OF THE *HANCE V. ARNOLD* COURT**

4 TO BE INSERTED HERE:

5 COURT'S DECISION RELATED TO APPLICABILITY OR NON-APPLICABILITY OF A.R.S.
6 § 45-172 TO SEVERANCES AND TRANSFERS OF RIGHTS UNDER THE DITCH

7 **V. LEGAL EFFECT OF HWU AGREEMENTS**

8 The Court will not be reviewing or approving any HWU Agreements entered into between
9 SRP and a shareholder as part of the MOU process. Shareholders are free to enter into private party
10 contracts with SRP as deemed appropriate by the parties to those agreements. However, where
11 HWU Agreements govern the conduct of the parties as it relates the Ditch, the Court will be obliged
12 to enforce the terms of those agreements as to the parties to those agreements, provided that the
13 agreements do not interfere with the Court's continuing jurisdiction to administer and enforce the
14 *Hance v. Arnold* Decree.

15 **VI. ESTABLISHMENT OF COURT-APPROVED MAILING LIST**

16 The Court is establishing a Court-approved mailing list for this matter, which includes all
17 proceedings related to the MOU process as well as the Court's own process for clarifying which
18 lands are entitled to receive water under the *Hance v. Arnold* Decree. Any shareholder wishing to
19 receive future notice of Court filings in these proceedings shall file a notice with the Court on the
20 form provided attached to this Order on or before _____, ____ 2015, to indicate that such
21 person desires to be added to the mailing list. In order to reduce the expense and burden on the
22 Court, the VDC, and the shareholders, for providing service of Court filings to the mailing list, the
23 Court requests that the shareholder indicate on the form whether or not the shareholder will agree
24 waive service by U.S. mail and accept service of future Court filings by email for this matter.
25
26

1 After _____, ____ 2015, any person desiring to be added to the Court-approved
2 mailing list shall file a motion with the Court in this matter providing the reason for requesting to be
3 added to the mailing list. All persons on the mailing list shall keep the Court informed of updated
4 mailing, phone and email addresses by filing notices with the Court.

5 The Court-approved mailing list shall be maintained by the Yavapai County Clerk of the
6 Court and a copy of the most current mailing list will be available at the Verde Ditch Company
7 office in Camp Verde, Arizona and shall be posted on the Verde Ditch Company's website.

8 **VII. SERVICE OF PLEADINGS**

9 All pleadings that a party may wish the Court to consider in this matter shall be filed with
10 the Yavapai County Clerk of the Court using the caption set forth above and a copy of such filing
11 shall be sent to all parties on the Court-approved mailing list according to the required manner of
12 service noted on the list (U.S. Mail or Email).

13 **VIII. ORDERS AND HEARING NOTICES**

14 All orders and notices of scheduled hearings shall be available from the Yavapai County
15 Superior Court, at the Verde Ditch Company office, and shall be posted on the Verde Ditch
16 website. Further, all orders and notices of scheduled hearings shall be served to the Court-approved
17 mailing list.

18 When a shareholder's lands are directly the subject of a hearing or proceeding to determine
19 a particular shareholder's right to receive water from the Verde Ditch, the Verde Ditch Company
20 shall serve copies of all orders and notices of hearings related thereto on the affected shareholder by
21 U.S. mail unless the shareholder has waived service by mail and agrees to accept service by email.

22 The Court may also direct other additional forms of service or notification during the course
23 of these proceedings to comport with the requirements of due process.
24
25
26

1 **IX. APPEARANCES**

2 Any shareholder wishing to participate in these proceedings or at a hearing shall file a
3 written Notice of Appearance with the Court, shall file all pleadings in compliance with the Arizona
4 Rules of Civil Procedure, and shall abide by the orders of this Court regarding the conduct of these
5 proceedings. All orders of the Court related to these proceedings shall be posted on the Verde
6 Ditch Company's website.

7 **X. INFORMATION SHARING AMONG THE VDC, SRP AND THE SHAREHOLDERS**

8 As part of the MOU process, the VDC and SRP have set aside the following dates and times
9 to conduct individual shareholder meetings to review the information that VDC and SRP have
10 collected regarding Historic Water Use on particular shareholder's lands:
11

12 _____
13 _____
14 _____

15 Shareholders who wish to meet with the VDC and SRP to review this documentation are to
16 contact the Verde Ditch Company to set a specific date and time for their individual meeting. If
17 additional times slots are required to accommodate individual shareholder meetings, the VDC will
18 post additional available dates and times on the VDC website.

19 At individual shareholder meetings, VDC and SRP will provide a packet, free of charge, to
20 the shareholder containing the information and documentation that VDC and SRP have collected
21 related to the shareholder's lands ("Shareholder Packet"). The Shareholder Packet will contain
22 copies of all of the documents the VDC and SRP have used to arrive at their conclusion of Historic
23 Water Use for a particular shareholder's lands.

24 Additionally, if a shareholder does not wish to meet with SRP or the VDC, the shareholder
25 may request a copy of their Shareholder Packet to be made available for pick-up at the VDC
26

1 offices, or by mail, through submitting a written request to the VDC on the form provided by the
2 VDC for such purpose. The VDC request form for the Shareholder Packet shall be posted on the
3 VDC website for a shareholder to print out and submit to the VDC. Shareholders requesting to
4 receive a Shareholder Packet by mail shall submit payment, in advance, for the cost of postage to
5 mail the Shareholder Packet to the shareholder.

6 Shareholders may also choose to provide the VDC and SRP with additional information or
7 documentation related to their lands, and if they do so, the information and documentation shall be
8 added to the Shareholder Packet for the individual shareholder's lands.

9 The VDC shall maintain the Shareholder Packets in the records of the VDC, and as
10 additional information or documentation is obtained, the VDC shall supplement the Shareholder
11 Packets. These Shareholder Packets, if properly maintained by the VDC, will also serve as a useful
12 resource in the future when the Gila River Adjudication begins the adjudication of Verde Ditch
13 water rights. The Court contemplates that current shareholders, or their successors-in-interest, may
14 one day find these Shareholder Packets helpful when the Adjudication takes up these matters.
15

16 Any information and documentation shared among the VDC, SRP and the shareholder may
17 be used as evidence in the Court's consideration of the status of a shareholder's lands and any other
18 shareholder involved in these proceedings may obtain another shareholder's information and
19 documentation contained in the Shareholder Packets to review, as further prescribed in Section IX.
20 of this Order.

21 If a shareholder does not wish to meet with or share information with the VDC and SRP as
22 part of the MOU process, the shareholder will be provided an opportunity to present their
23 information and documentation during the Court's proceedings to clarify which lands are entitled to
24 receive water from the Verde Ditch under the *Hance v. Arnold* Decree, provided that the
25
26

1 shareholder follows this Order and the future orders of this Court for disclosing and presenting such
2 information and documentation during the Court proceedings.

3 **XI. FEES FOR SHAREHOLDER PACKETS**

4 After the VDC provides the initial Shareholder Packet to a shareholder as described in
5 Section VII. of this Order, for future requests by a Shareholder for their Shareholder Packet, the
6 VDC may charge, in advance, a \$10 administrative fee, plus a copy fee of \$0.10 per page, plus a
7 postage fee if the Shareholder Packet is to be mailed to the shareholder.

8 In the event the VDC digitizes the Shareholder Packets and the Shareholder Packets may be
9 made available electronically to the requestor, the VDC shall waive the copy and postage fees.
10 While not required at this time, the Court strongly encourages the VDC to work towards the
11 digitization of the Shareholder Packets as a means to reduce future costs of administration of the
12 Shareholder Packets and disclosure that will be required during the Court's process for clarifying
13 the lands entitled to water delivered from the Verde Ditch.
14

15 Prior to the Court entering future orders for discovery and disclosure as it relates to the
16 Court's process for clarifying the lands entitled water delivered from the Verde Ditch, any requests
17 made to the VDC for Shareholder Packets for any parcel not owned by the requesting shareholder
18 shall be referred to the Court for consideration and approval.

19 **XII. FINAL "WORKING UNDERSTANDINGS" AND MAP**

20 As part of the MOU process, SRP and VDC will be creating a final "Working
21 Understandings" document and Map to delineate their analysis as to the status of each shareholder's
22 lands and whether or not they believe those lands are entitled to water to be delivered from the
23 Verde Ditch. At this time, SRP and VDC have created a preliminary Map which is considered part
24 of the "Working Understandings" of the MOU, but they wish to finalize their "Working
25
26

1 Understandings” and Map for their MOU purposes only after receiving any additional input the
2 shareholders would like to provide to them.

3 Once SRP and VDC have reached agreement on a final “Working Understanding”
4 document and Map, SRP and VDC shall submit the final “Working Understandings” Document and
5 Map to the Court and provide notice of the submittal to the Court-approved mailing list. The final
6 “Working Understandings” and Map shall also be posted on the VDC website in sufficient detail
7 for shareholders to review.

8 The “Working Understandings” and final Map shall include delineations of all lands under
9 the jurisdiction of the Verde Ditch as well as any lands which are presently being served with water
10 from the Verde Ditch. This includes the delineation of all lands that have historically received
11 water from the Ditch but are no longer receiving or taking water from the Ditch for any reason,
12 including, but not limited to, lands that have been converted to other non-irrigation uses such as for
13 roads and buildings.
14

15 As part of the final “Working Understandings” and Map that will be submitted to the Court,
16 SRP and VDC shall also include a detailed description of the process utilized in making the color
17 designations for the lands, a list of all reference sources consulted and reviewed, and any
18 assumptions made regarding the assignments of colors, sufficient to apprise the Court and the
19 shareholders of how the “Working Understandings” and Map were prepared.

20 Further, in the event SRP and VDC disagree as to the status of any particular lands, SRP and
21 VDC shall delineate those lands on the Map and provide an explanation to the Court of the area(s)
22 of disagreement for each parcel in the “Working Understandings” document.

23 After the final “Working Understandings” and Map is submitted to the Court, the Court will
24 provide a period of time for SRP and the individual shareholders to consider whether or not they
25 would like to enter into HWR Agreements and Severance and Transfer Agreements with SRP.
26

1 After this time expires, the Court will then begin its process of clarifying the lands that are entitled
2 to receive water from the Verde Ditch pursuant to the *Hance v. Arnold* Decree.

3 Notwithstanding the Court's initiation of its clarification process, nothing shall prevent SRP
4 and an individual shareholder from entering into HWR Agreements and Severance and Transfer
5 Agreements and making Applications for Severance and Transfer after the initial period of time has
6 expired. Further, nothing herein shall prevent a shareholder from filing an Application for
7 Severance and Transfer with the Court which is independent of the process and agreements with
8 SRP that are described in the MOU.

9 **XIII. THE VDC SHALL AMEND ITS STATEMENT OF CLAIMANT NO. 39-50029 IN**
10 **THE GILA RIVER AJUDICATION TO REFLECT ALL COURT-APPROVED**
11 **SEVERANCE AND TRANSFERS**

12 Whenever this Court approves a severance and transfer of water rights under the jurisdiction
13 of the *Hance v. Arnold* Court, the Verde Ditch Company shall from time to time file amendments to
14 the Verde Ditch Company's Statement of Claimant No. 39-50029 in the Gila River Adjudication to
15 reflect this change.

16 **XIV. LEGAL EFFECT OF MOU'S WORKING UNDERSTANDINGS AND MAP –**
17 **EVIDENTIARY STANDARDS AND BURDENS OF PROOF**

18 The MOU's final "Working Understandings", Map, and information and documentation
19 contained in the Shareholder Packets, may be presented as evidence when the Court begins the
20 process of clarifying which lands are entitled to water service from the Verde Ditch under the
21 *Hance v. Arnold* Decree, provided that these items meet the requirements for evidence as prescribed
22 by the Arizona Rules of Evidence. However, no presumption of validity of such evidence shall
23 attach to the Working Understandings, Map or information or documentation contained in the
24 Shareholder Packets, and the Court will give the appropriate weight to all evidence presented to it,
25 including any evidence presented to the Court by a shareholder or other party participating in these
26

1 proceedings. A preponderance of the evidence shall be the standard burden for determining
2 whether or not a particular parcel of land is entitled or not entitled to water service from the Ditch.

3 Further, all of the information collected and/or reflected in the “Working Understandings”
4 shall not be deemed an admission against interest or a waiver, relinquishment or future limitation as
5 to a Shareholder’s right to assert or file a water right claim in the Adjudication or any other
6 proceeding that may be inconsistent with the “Working Understanding” determinations or limit the
7 ability of a Shareholder to present evidence before the Court in the future in the enforcement and
8 interpretation of the *Hance v. Arnold* Decree.

9 **XV. APPLICATIONS FOR SEVERANCES AND TRANSFERS**

10 Applications filed with the Court for Severances and Transfers of Verde Ditch rights,
11 whether filed as a result of the MOU process or those being filed independently outside of the
12 MOU process, shall be filed with the Court with copies served on all parties on the Court-approved
13 mailing list. Upon receipt of an Application for a Severance and Transfer, the Court will set a
14 procedural conference to set forth a more detailed process for addressing the Application prior to
15 any evidentiary hearing being set to consider such Application. The Arizona Rules of Civil
16 Procedure and the Arizona Rules of Evidence will be followed with respect to the Court’s
17 consideration of any Application filed for Severances and Transfers.
18

19 **XVI. RECONCILIATION OF DITCH SHARES AND ASSESSMENTS**

20 Nothing contained in the MOU shall modify or amend any assessment or charge by VDC
21 retroactively. Any changes in a Shareholder’s assessments (regular or special), shall be prospective
22 only and shall be approved by the Court prior to implementation by the VDC.

23 **XVII. VDC RULES AND REGULATIONS**

24 The Court’s approval of the MOU shall not be deemed a modification of the existing Rules
25 and Regulations of the VDC.
26

1 **XVIII. CONSIDERATION FOR APPROVAL OF FINAL SETTLEMENT AGREEMENT**
2 **BETWEEN VDC AND SRP**

3 Upon the VDC and SRP filing an application for approval of the Final Settlement
4 Agreement between the VDC and SRP with the Court, the shareholders shall be provided with an
5 opportunity to file objections and comments to any terms of the proposed Final Settlement
6 Agreement that were not included in ¶ 12 of the MOU as terms of settlement and the Court will
7 address those at that time.

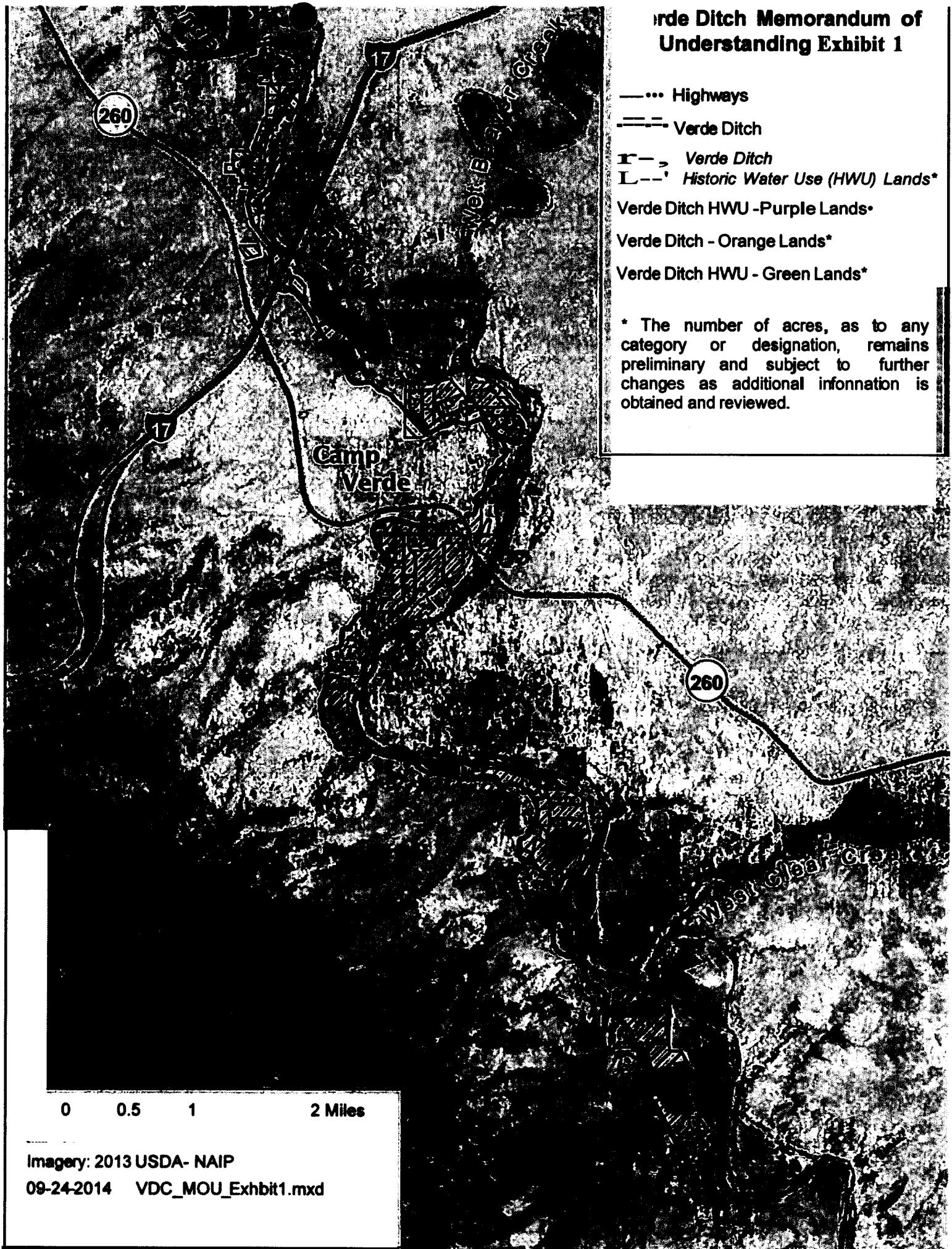
8
9 SO ORDERED this _____ day of _____, 2015.

10
11 By: _____
12 The Honorable David L. Mackey
13 Judge of the Superior Court
14 Master of the Verde Ditch
15
16
17
18
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26

Verde Ditch Memorandum of Understanding Exhibit 1

- Highways
- Verde Ditch
- Verde Ditch
- Historic Water Use (HWU) Lands*
- Verde Ditch HWU - Purple Lands*
- Verde Ditch - Orange Lands*
- Verde Ditch HWU - Green Lands*

* The number of acres, as to any category or designation, remains preliminary and subject to further changes as additional information is obtained and reviewed.



Imagery: 2013 USDA- NAIP

09-24-2014 VDC_MOU_Exhibit1.mxd



Exhibit 1 to MOU (Zoom) – Showing Area Where SRP Owns Lands in Camp Verde



**Yavapai
County
GIS Map**

 **SRP Parcels**
and

 **Verde Ditch
Lands
Shown on
Exhibit 1 to
MOU**



345 FILED
O'Clock, P M
AUG 30 1991
By ROBERT G. WEDEPOHL, Clerk
Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

GEORGE W. HANCE, et al.)
Plaintiffs,) No. 4772
vs.) STIPULATION FOR SEVERANCE
AND TRANSFER OF IRRIGATION
WATER RIGHTS PURSUANT TO
WALES ARNOLD, et ux., et al.,) A.R.S. 45-172
Defendants.)

Comes now the Verde Ditch, James and Colleen Davis, Vernon and Shirley Bridler, and Thermon Bates, and hereby stipulate to that the irrigation water rights currently held by Vernon and Shirley Bridler, and Thermon Bates be severed from their property and transferred to the real property currently owned by James and Colleen Davis.

Factual Background

Vernon and Shirley Bridler and Thermon Bates currently hold one share in the Verde Ditch, but are unable to make use of their irrigation right. They wish to be relieved from any further responsibility in connection with the Verde Ditch, including their obligations to make payments for annual irrigation service, which they do not currently use.

James and Colleen Davis also own land which borders on the Verde Ditch, and are currently involved in litigation with the Verde Ditch relating to the rights of the Ditch to use portions

1 of his land for easement purposes. This transfer and severance
2 is a prerequisite to settlement of that dispute.

3 Legal Authority

4 A.R.S. 45-172(6) provides that severance and transfers may
5 be accomplished so long as the affected parcels both lie within
6 the boundaries of the same irrigation district. In this case,
7 all parcels do. The statute reads as follows:

8 A severance and transfer of an irrigation water
9 right appurtenant to lands within the boundaries of an
10 irrigation district to other lands within the
11 boundaries of the same irrigation district for
12 agricultural use may be accomplished by the exclusion
13 of lands to which a water right is appurtenant from
14 within the boundaries of such irrigation district.
15 Such severance and transfer of a water right shall
16 require the consent of only the irrigation district
17 within which the affected lands are situated and of the
18 owners of the lands affected by the severance and
19 transfer. No proceedings before nor approval by the
20 director shall be required to accomplish such severance
21 and transfer.

22 In this case, the parties are also seeking a formal court
23 order as the Verde Ditch remains under the jurisdiction of the
24 Yavapai Superior Court.

25 For the foregoing reasons, the parties stipulate that
irrigation rights attendant to the Verde Ditch currently
appurtenant to the real property owned by Vernon and Shirley
Bridler and Thermon Bates be severed from that property and
transferred to the real property owned by James and Colleen
Davis, effective as of the date of the entry of the Court order.

Dated this 12 day of July, 1991.

Verde Ditch Company

By

Glen W. Everett

Thermon J. Bates
Thermon Bates

James Davis
James Davis

Colleen Davis
Colleen Davis

Vernon Bridler
Vernon Bridler

Shirley Bridler
Shirley Bridler

Copy of the foregoing mailed this
____ day of _____, 1991 to:

Hon. James B. Sult
Yavapai County Superior Court
Prescott, AZ 86301

L. Richard Mabery
101 E. Gurley, Suite 203
Prescott, AZ 86301
Attorney for Plaintiffs

345 FILED
O'Clock, L M
AUG 30 1991
NOBBERT G. WEDEPOHL, Clerk
By *Robert G. Wedepohl*
Deputy

1 L. Richard Mabery, Esq.
2 L. RICHARD MABERY, P.C.
3 101 East Gurley Street, Suite 203
4 Prescott, Arizona 86301
5 (602) 778-1116
6 State Bar I.D. No. 005188

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8
9 IN AND FOR THE COUNTY OF YAVAPAI

10 GEORGE W. HANCE, et al.)
11 Plaintiff,) No. 4772
12 vs.)
13 WALES ARNOLD, et ux., et al.) Division 3
14 Defendant.)
15 STIPULATED ORDER

16 Upon Stipulation being filed and good cause appearing
17 therefrom, it is hereby ORDERED, ADJUDGED AND DECREED:

18 1. The VERDE DITCH COMPANY shall have an easement for
19 ingress, egress and maintenance of the Verde Ditch over and across
20 the real property described in Exhibit "A" attached hereto and by
21 this references made a part hereof owned by JIM DAVIS and COLLEEN
22 DAVIS, husband and wife, for a distance of twenty (20) feet
23 commencing at the centerline of the existing Verde Ditch. Said
24 easement shall be appurtenant to the land described in Exhibit "A"
25 and shall be for the benefit of the Verde Ditch Company, its
26 successors and assigns.

27 2. Defendants, JIM DAVIS and COLLEEN DAVIS, husband and
28 wife, shall within thirty (30) days remove all existing fences or

* * * * *

1 any other improvements constructed within the ditch easement set
2 forth hereinabove.

3 3. Defendants and their successors and assigns shall
4 not construct or install any gates, buildings, posts, fences,
5 cross-fences or any other obstructions along or over the ditch or
6 in the easement area adjacent to the ditch as set forth herein-
7 above, which interferes with the flow of the Verde Ditch or the
8 ability of the Verde Ditch Commissioners, agents or employees to
9 move necessary equipment up and down the ditch and ditch banks.

10 4. Verde Ditch Company shall pay Defendants \$750.00 for
11 and as a portion of the costs for removal of all gates, fences or
12 other improvements located within the ditch right-of-way and
13 easement as granted herein.

14 5. Each party shall pay their own attorney's fees and
15 court costs incurred herein. All other claims by and between the
16 parties as set forth in the respective parties' pleadings on file
17 herein are dismissed.

18 6. There being no just cause for delay, the court
19 orders that this judgment shall be entered pursuant to Rule 54(b),
20 Arizona Rules of Civil Procedure.

21 DONE IN OPEN COURT this 30 day of August,
22 1991.

23
24
25 James B. Suet
26 JUDGE OF THE SUPERIOR COURT
27
28


* * * * *

* * * * *


LAW OFFICES OF
L. RICHARD MABERY, P.C.
101 E. GURLEY • SUITE 203
PRESCOTT, ARIZONA 86301
(602) 778-1116

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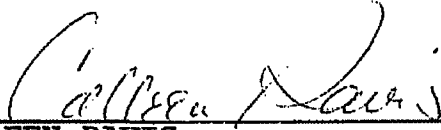
APPROVED AS TO FORM AND CONTENT:



Douglas G. Wymore
Counsel for DAVIS



JAMES A. DAVIS, also known as
JIM DAVIS



COLLEEN DAVIS

EXHIBIT "A"

A parcel of land located in the Southeast one quarter of the Northwest one quarter of Section 6, Township 13 North, Range 5 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

COMMENCING for reference at the West one quarter corner of said Section 6 from which the Southwest corner of said Section bears South $00^{\circ}05'35''$ East;
Thence South $00^{\circ}05'35''$ East along the West line of the Southwest one quarter of said Section 6, a distance of 180.97 feet to a point;
Thence South $89^{\circ}58'30''$ East, a distance of 1295.58 feet to a point on the West line of Lot 8 of said Section 6;
Thence North $00^{\circ}12'18''$ East, along the West line of said Lot 8, a distance of 179.02 feet to the Northwest corner of said Lot 8, said point also being the Southwest corner of the aforesaid Southeast one quarter of the Northwest one quarter of Section 6;
Thence continuing North $00^{\circ}12'18''$ East, along the West line of the said Southeast one quarter of the Northwest one quarter, a distance of 117.28 feet to the TRUE POINT OF BEGINNING;
Thence continuing North $00^{\circ}12'18''$ East, along said West line, a distance of 679.89 feet to a point;
Thence leaving said West line, North $89^{\circ}55'05''$ East, a distance of 480.65 feet to a point in the center of the Woods Ditch;
Thence South $23^{\circ}50'58''$ West, along the center of the Woods Ditch, a distance of 183.95 feet to a point;
Thence South $18^{\circ}05'51''$ West along the center of the Woods Ditch, a distance of 280.34 feet to a point;
Thence South $33^{\circ}50'44''$ West along the center of the Woods Ditch, a distance of 126.47 feet to a point;
Thence South $44^{\circ}46'55''$ West, along the center of the Woods Ditch, a distance of 96.97 feet to a point;
Thence South $59^{\circ}03'44''$ West, along the center of the Woods Ditch, a distance of 93.17 feet to a point;
Thence leaving said ditch, North $41^{\circ}07'10''$ West, a distance of 26.88 feet to a point;
Thence South $52^{\circ}59'20''$ West, a distance of 106.89 feet to the TRUE POINT OF BEGINNING; and

Subject to all other covenants, conditions, restrictions, easements, rights of way, liens and encumbrances of record.

L. Richard Mabery, Esq.
L. RICHARD MABERY, P.C.
101 East Gurley Street, Suite 203
Prescott, Arizona 86301
(602) 778-1116
State Bar I.D. No. 005188

345 FILED
O'Clock, P M
AUG 30 1991
NORBERT G. WEDEPOHL, Clerk
By *[Signature]*
Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

GEORGE W. HANCE, et al.)	
)	No. 4772
Plaintiff,)	
)	
vs.)	Division 3
)	
WALES ARNOLD, et ux., et al.)	
)	STIPULATION FOR ENTRY
Defendant.)	OF JUDGMENT

VERDE DITCH COMPANY, by and through undersigned counsel,
L. Richard Mabery, and JIM DAVIS and COLLEEN DAVIS, husband and
wife, by and through undersigned counsel, Douglas G. Wymore, hereby
stipulate and agree that the attached Order may be entered by the
Court in this matter.

DATED this 29th day of August, 1991.

[Signature]
L. Richard Mabery
101 E. Gurley St., Ste. 203
Prescott, Arizona 86301
Counsel for VERDE DITCH
COMPANY

[Signature]
Douglas G. Wymore
1136 East Campbell
Phoenix, Arizona 85014
Counsel for DAVIS

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 3 NORBERT G. WEDEPOHL, Clerk of Superior Court
HON. JAMES B. SULT By: BEKI HAWKINS, Deputy Clerk
CASE NO.: 4772 DATE: AUGUST 30, 1991
SEPTEMBER 3, 1991 MAILED

TITLE:	COUNSEL:
GEORGE W. HANCE, et al., (Plaintiff)	L. RICHARD MABERY (For Plaintiff)
vs.	and
WALES ARNOLD, et al., (Defendant)	DOUGLAS WYMORE (For Defendant)

HEARING ON:	NATURE OF PROCEEDINGS	COURT REPORTER
-------------	-----------------------	----------------

Stipulation for Severance and Transfer of Irrigation Water Rights Pursuant to A.R.S. 45-172 having been filed herein, now therefore, IT IS ORDERED said Stipulation is granted as more fully set forth therein.

Stipulated Order having been filed herein, now therefore, IT IS ORDERED said Stipulated Order is granted as more fully set forth therein.

395 FILED
O'Clock, P M
AUG 30 1991
By NORBERT G. WEDEPOHL, Clerk
Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

GEORGE W. HANCE, et al.)
Plaintiffs,) No. 4772
vs.) ORDER
WALES ARNOLD, et ux., et al.,)
Defendants.)

For good cause shown, and pursuant to the stipulation of the Verde Ditch and the parties affected by this severance and transfer,

IT IS HEREBY ORDERED, that irrigation rights attendant to the Verde Ditch currently appurtenant to the real property owned by Vernon and Shirley Bridler and Thermon Bates be severed from that property and transferred to the real property owned by James and Colleen Davis.

The undersigned have carefully read the Stipulation for Severance and Transfer of Irrigation Water Rights. We agree to and understand the terms set forth in the foregoing Order.

Verde Ditch Company

By [Signature]

[Signature]
Thermon Bates

1 James Davis
James Davis

Colleen Davis
Colleen Davis

2
3 Vernon Bridler
4 Vernon Bridler

Shirley Bridler
Shirley Bridler

5 DONE IN OPEN COURT 'this 30 day of August, 1991.

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7 James B. Selt
8 Judge of Superior Court
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Subject: RE: Public Records Request

Date: Wednesday, March 25, 2015 at 12:53:05 PM Mountain Standard Time

From: Michelle A. Moreno

To: Robyn Interpreter

CC: Alexandra Corcoran

Hi Robyn,

I'm sending this email to follow up per our telephone conversation yesterday. In regards to your public records request submitted on March 18, 2015, the Department has conducted a search for sever and transfer files related to water rights associated with the delivery from the Verde Ditch and has determined that no such files exist (between the timeframe of June 12, 1980 to March 24, 2015).

Sincerely,

Michelle Moreno
Public Information Officer
Arizona Department of Water Resources
Phone: 602.771.8530
Email: mamoreno@azwater.gov



**PROTECTING ARIZONA'S
WATER SUPPLIES
for ITS NEXT CENTURY**

From: Robyn Interpreter [mailto:rinterpreter@milawaz.com]

Sent: Wednesday, March 18, 2015 1:36 PM

To: Michelle A. Moreno

Cc: Alexandra Corcoran

Subject: Public Records Request

Please find attached a Public Records Request form. It is easiest to either email or call me to discuss the request and how we can go about getting the records as efficiently as possible. Thank you in advance for your time.

Best Regards,

Robyn L. Interpreter
MONTGOMERY & INTERPRETER, PLC
4835 E. Cactus Rd. Suite 210
Scottsdale, AZ 85254
Ph. (480) 513-6825
Fax (480) 513-6948

NOTICE: This message is for the designated recipient only and

contains confidential, attorney-client privileged information. If you have received it in error, please notify the sender immediately and delete the original and any copy or printout. Unintended recipients are prohibited from making any other use of this e-mail. Although we have taken reasonable precautions to ensure no viruses are present in this e-mail, we accept no liability for any loss or damage arising from the use of this e-mail or attachments, or for any delay or errors or omissions in the contents which result from e-mail transmission.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/03/2004

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

W-1, W-2, W-3, W-4(Consolidated)

FILED: **August 11, 2004**

In Re the General Adjudication
of All Rights to Use Water in
The Gila River System and Source

MINUTE ENTRY

A status hearing was held on July 1, 2004, to consider the applications of the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District (collectively "SRP") for provisional injunctive relief against Henry M. Shill and Don H. Shill, dba Shield Ranch, Inc., Kovacovich Investment Ltd. Partnership, Wiertzema Family Trust, Jim and Linda Wyman, Myron Ray, First American Title Trust 4693, Linda S. and Paul R. Robinson, Chester-Campbell, L.L.C., NBJ Ranch Ltd. Partnership, Josephine C. Leslie and Verde River Ranch, L.L.C. The Cities of Phoenix and Tempe filed memoranda in support of SRP's applications. Other claimants, most notably, the City of Casa Grande, the Roosevelt Water Conservation District, a group of cities and towns referred to as the "Verde Valley Communities," and several irrigation districts referred to as the "Upper Valley Irrigation Districts" and the "Central Valley Irrigation Districts"¹ filed a memorandum

¹ The "Verde Valley Communities" include the Cities of Sedona and Cottonwood and the Towns of Jerome and Clarkdale. The "Upper Valley Irrigation Districts" include the Gila Valley Irrigation District and the Franklin Irrigation District, while the "Central Valley Irrigation Districts" are

Docket Code 000

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/03/2004

CLERK OF THE COURT
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HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

W-1, W-2, W-3, W-4 (Consolidated)

in support of SRP's requests only to the extent the relief requested would not require the Court to consider the extent of the subflow zone within the Verde River Watershed.

Respondents² oppose SRP's request to have its applications heard for three substantive reasons: 1. the applications are barred by the doctrine of laches; 2. the relative harm to other claimants in the adjudication outweighs SRP's need for relief; and 3. considering the merits of SRP's applications will divert the Court from its original mission of adjudicating water rights by initiating a series of provisional remedy hearings.³

Respondents Don H. Shill, Henry M. Shill, dba Shield Ranch, Inc. argue both that this Court does not have the inherent authority to grant provisional injunctive relief, and that considering SRP's applications would be contrary to the intent of the McCarran Amendment, 43 U.S.C. § 666.

Respondent NBJ Ranch Limited Partnership asserts that its dispute with SRP must be heard in a Yavapai County division of the Superior Court due to the existence of a prior judgment of that Court concerning its water rights.

At the hearing, the Court informed the parties it rejects the notion that the adjudication court does not possess the

comprised of the Maricopa-Stanfield Irrigation and Drainage District and the Central Arizona Irrigation and Drainage District.

2 Several named respondents, including Linda S. Robinson, Paul R. Robinson, Chester-Campbell, L.L.C., Kovacovich Investment Limited Partnership, Wiertzema Family Trust, Jim and Linda Wyman, and Myron Ray did not file responses or appear at the status hearing.

3 In a letter dated July 7, 2004, SRP notified the court it is no longer seeking relief against respondent First American Title Trust No. 4693. SRP indicated in its July 7, 2004, letter that now that First American Title Trust No. 4693 is not involved SRP will amend its application to include the owners of the properties formerly listed as First American Title Trust No. 4693.

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R. Luiszer
Deputy

W-1, W-2, W-3, W-4 (Consolidated)

authority to order injunctive relief. The Court also does not believe that, in this instance, holding hearings to determine whether provisional relief should be ordered would violate the grant of authority supplied by the McCarran Amendment. And in light of the fact there is only one Superior Court in Arizona, this division does not believe it is compelled to refrain from considering issues arising in this adjudication between parties to other state court judgments or litigation concerning water rights pending outside Maricopa County.

At the status hearing, a great amount of time was spent obtaining an avowal from SRP as to the scope of the relief requested. The Court is committed to ensuring that neither SRP nor any other claimant can avoid the general adjudication process and obtain judicial determination of the extent and priority of competing water rights claims on a preferential basis. The court will not consider a request for provisional relief that requires it to decide factual or legal matters that might be used as precedent for resolving disputes involving claimants that will not be parties to the hearings on SRP's applications.

The court made clear that it would only consider setting a hearing on SRP's requests if SRP affirmed that it intends, as part of its efforts to demonstrate entitlement to a provisional remedy, to establish that the respondents do not possess colorable water right claims. There was a great deal of discussion during the hearing as to what constitutes a "colorable claim." For purposes of SRP's applications, a "colorable claim," at a minimum, includes water rights claims existing prior to and after June 12, 1919, for which relevant filings or documentation were on file with the Arizona Department of Water Resources prior to the date SRP filed the applications.

The court indicated that should these matters proceed and the court subsequently finds there was not a good faith basis to

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R. Luiszer
Deputy

W-1, W-2, W-3, W-4(Consolidated)

assert that a respondent does not hold a colorable water rights claim, appropriate relief would be granted to any affected party.

Based upon SRP's avowal regarding the scope of the requests set forth in its applications for provisional injunctive relief,

IT IS ORDERED granting SRP's request for evidentiary hearings to consider whether provisional injunctive relief should be granted against respondents. Toward this end, SRP is directed to obtain service of process on respondents Linda S. Robinson, Paul R. Robinson Chester-Campbell L.L.C., Kovacovich Investment Limited Partnership, Wiertzema Family Trust, Jim and Linda Wyman, Myron Ray, and if necessary and appropriate, the owners of the properties formerly listed as First American Title Trust No. 4693.

IT IS FURTHER ORDERED, in accordance with Arizona Rule of Civil Procedure 16, a comprehensive pretrial conference shall be held on October 1, 2004 at 10:00 a.m., in the Central Court Building, Courtroom 402, 201 West Jefferson, Phoenix, Arizona. At the conference, the court will consider any outstanding discovery disputes, proposals for scheduling the evidentiary hearings to be held, and any other relevant scheduling and case management matters.

* * * *

A copy of this minute entry is mailed to all parties on the Court-approved W-1, W-2, W-3 and W-4 mailing list dated October 6, 2003, and the parties listed below.

NBJ Ranch Ltd. Partnership
P. O. Box 9
Camp Verde, AZ 86322

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/03/2004

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

W-1, W-2, W-3, W-4 (Consolidated)

Chester-Campbell, LLC
c/o Betty Chester & Dowling Campbell
P. O. Box 2166
Camp Verde, AZ 86322

Kovacovich Investment Limited Partnership
c/o George Kovacovich
P. O. Box 578
Camp Verde, AZ 86322

Josephine C. Leslie
6101 E. Naumann Dr.
Paradise Valley, AZ 85251

Verde River Ranch, LLC
c/o Richard W. MacMillan
6333 E. Mariposa
Scottsdale, AZ 85251

Josephine C. Leslie
c/o Hahn Howard & Greene, LLP
Attn: Michael E. Neumann
3200 N. Central Ave., Suite 1560
Phoenix, AZ 85012

Myron Ray
3841 N. Steves Blvd.
Flagstaff, AZ 86004

Shield Ranch; Don & Henry Shill
c/o Scott K. Risley, P.C.
P. O. Box 2471
Prescott, AZ 86302

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/03/2004

CLERK OF THE COURT
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HONORABLE EDDWARD BALLINGER, JR.

R. Luiszer
Deputy

W-1, W-2, W-3, W-4 (Consolidated)

Linda S. & Paul R. Robinson
P. O. Box 237
Camp Verde, AZ 86322

Wiertzema Family Trust
c/o Terry Wiertzema
2120 W. Encanto Blvd.
Phoenix, AZ 85009

Jim & Linda Wyman
4545 N. 36th St., Suite 117
Phoenix, AZ 85018